

No. 16173 ✓

SEE ALSO

3096

United States

## Court of Appeals

for the Ninth Circuit

PETER CROCKETT JACKSON, a Minor, by  
JOHN E. WALKER, His Guardian ad Litem,  
Appellant,

vs.

THE UNITED STATES NATIONAL BANK,  
PORTLAND, OREGON, a National Banking  
Association, et al., Appellees.

## Transcript of Record

Appeal from the United States District Court  
for the District of Oregon

FILED

DEC 29 1958

PAUL P. O'BRIEN, CLERK



No. 16173

---

United States  
Court of Appeals  
for the Ninth Circuit

---

PETER CROCKETT JACKSON, a Minor, by  
JOHN E. WALKER, His Guardian ad Litem,  
Appellant,

vs.

THE UNITED STATES NATIONAL BANK,  
PORTLAND, OREGON, a National Banking  
Association, et al., Appellees.

---

Transcript of Record

---

Appeal from the United States District Court  
for the District of Oregon

---



## INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	PAGE
Amendment to Complaint.....	21
Amended Complaint, First.....	55
Appeal:	
Certificate of Clerk to Transcript of Record on .....	122
Cost Bond on.....	116
Notice of .....	115
Statement of Points and Designation of Record on (USCA).....	124
Certificate of Clerk to Transcript of Record...	122
Complaint .....	6
Cost Bond on Appeal.....	116
Docket Entries .....	118
First Amended Complaint.....	55
Exhibit A — Last Will and Testament of Maria C. Jackson.....	75-99
Exhibit B — Last Will and Testament of Philip Ludwell Jackson.....	99-111

ii.

Judgment of Dismissal.....	114
Memorandum of Decision.....	24
Motion to Dismiss:	
Dated Aug. 23, 1956.....	24
Dated Jan. 7, 1958.....	112
Names and Addresses of Attorneys.....	1
Notice of Appeal.....	115
Order Appointing Guardian Ad Litem.....	5
Order of Dismissal Dated Dec. 31, 1957.....	54
Order on Motion to Dismiss First Amended Complaint .....	112
Petition for Appointment of Guardian Ad Litem .....	3
Statement of Points and Designation of Record on Appeal (USCA).....	124







## NAMES AND ADDRESSES OF ATTORNEYS

LIVINGSTON & BORREGARD,  
LAWRENCE LIVINGSTON,  
Russ Building,  
San Francisco 4, California,

RICARDO J. HECHT,  
Mills Building,  
San Francisco 4, California,

JOHN E. WALKER,  
908 Public Service Building,  
Portland 4, Oregon,

JACK, GOODWIN & SANTOS,  
GLENN R. JACK,  
Smith Building,  
Oregon City, Oregon,  
Attorneys for Appellant.

MAGUIRE, SHIELDS, MORRISON,  
BAILEY & KESTER,  
ROY F. SHIELDS,  
Pittock Block,  
Portland 5, Oregon,  
Attorneys for Appellees.



In The United States District Court  
District of Oregon

No. 8752

PETER CROCKETT JACKSON, a minor, by  
JOHN E. WALKER, his Guardian ad Litem,  
Plaintiff,

vs.

THE UNITED STATES NATIONAL BANK,  
PORTLAND, OREGON, a national banking  
association; DAVID LLOYD DAVIES; THE  
UNITED STATES NATIONAL BANK,  
PORTLAND, OREGON, a national banking  
association, and DAVID LLOYD DAVIES,  
as Executors under the purported will and  
testament of Maria C. Jackson, deceased; THE  
UNITED STATES NATIONAL BANK,  
PORTLAND, OREGON, a national banking  
association, and DAVID LLOYD DAVIES  
and WILLIAM W. KNIGHT, as purported  
Trustees appointed by said purported last will  
and testament; and BLACK WHITE FOUN-  
DATION, a corporation, Defendants.

PETITION FOR APPOINTMENT  
OF GUARDIAN AD LITEM

To the Honorable Judges of the United States  
District Court for the District of Oregon:

The petition of Peter Crockett Jackson and Mar-  
garet L. Kennedy respectfully shows:

1. Peter Crockett Jackson is fourteen (14) years of age. Margaret L. Kennedy is the mother of Peter Crockett Jackson; his father is dead. Margaret L. Kennedy is also the Guardian of the person and estate of Peter Crockett Jackson, having been appointed such Guardian by the Superior Court of the State of California, in and for the County of Los Angeles. At the time of said appointment and ever since, said Peter Crockett Jackson and Margaret L. Kennedy were and now are residents of the County of Los Angeles, State of California.

2. Said Peter Crockett Jackson intends to bring an action in this Court against the parties above named as defendants herein for the purpose of contesting the will of Maria C. Jackson which was admitted to probate in common form in the Circuit Court of Oregon on or about February 7, 1956, together with certain parts of the codicils to said will. Said contest will be based upon the invalidity of the will and parts of the codicils in certain particulars, and upon the information and belief of petitioners that a later will was executed by said testatrix wherein there were devised and bequeathed to Peter Crockett Jackson money and property in a value far in excess of the amount to which he would be entitled under the provisions of said will and codicils heretofore admitted to probate.

3. John E. Walker is an attorney at law, residing in the State of Oregon, duly admitted to prac-

tice in said State and in this Court. He is a fit and proper person to act as Guardian ad Litem for said minor, Peter Crockett Jackson. Your petitioners desire that said John E. Walker shall act as such Guardian ad Litem.

Wherefore, your petitioners pray that said John E. Walker be appointed Guardian ad Litem for Peter Crockett Jackson in this action.

Dated this 31st day of July, 1956.

/s/ PETER CROCKETT JACKSON,  
/s/ MARGARET L. KENNEDY,  
Petitioners.

LIVINGSTON & BORREGARD,  
RICARDO J. HECHT,

/s/ By LAWRENCE LIVINGSTON,  
Attorneys for Petitioners.

Duly Verified.

[Endorsed]: Filed August 3, 1956.

---

[Title of District Court and Cause.]

## ORDER APPOINTING GUARDIAN AD LITEM

Upon petition of Peter Crockett Jackson and Margaret L. Kennedy, his Guardian, and good cause appearing therefor,

It Is Hereby Ordered that John E. Walker be and is hereby appointed Guardian ad Litem for

Peter Crockett Jackson in the above-entitled action.

Dated, this 3rd day of August, 1956.

/s/ GUS J. SOLOMON,  
United States District Judge.

[Endorsed]: Filed August 3, 1956.

---

[Title of District Court and Cause.]

## COMPLAINT

### I.

Plaintiff is a minor of fourteen years of age, and brings this suit through John E. Walker, his Guardian ad litem.

### II.

Plaintiff is a resident and citizen of the State of California. Defendant, The United States National Bank of Portland, Oregon, is a national banking association whose principal office and place of business is located in the State of Oregon. Defendant David Lloyd Davies and William W. Knight are residents and citizens of the State of Oregon. The matter in controversy exceeds, exclusive of interest and costs, the sum of Three Thousand Dollars (\$3,000.00).

### III.

Mrs. Maria C. Jackson (hereinafter referred to as "Mrs. Jackson") died on February 3, 1956. As hereinafter appears, plaintiff is, and has been ever since 1953, the only surviving lineal descendant, next of kin, and heir at law of Mrs. Jackson.

#### IV.

On or about February 7, 1956, there was admitted to probate in the Circuit Court of Multnomah County, Oregon, a purported will, and four codicils thereto, purporting to be the Last Will and Testament of Mrs. Jackson. This will is dated January 7, 1948, and the codicils bear dates of February 23, 1950, August 15, 1952, February 27, 1953, and July 8, 1953, respectively. Said will and codicils were admitted to probate in common form, ex parte and without notice to any person whomsoever. True and correct copies of said will and codicils are attached hereto as one exhibit, made a part hereof, and marked Exhibit "A."

#### V.

The value of the estate left by Mrs. Jackson is in excess of Two Million Four Hundred Thousand Dollars (\$2,400,000.00).

#### VI.

Said will was admitted to probate on the application of defendant David Lloyd Davies (hereinafter referred to as "defendant Davies") and defendant The United States National Bank, Portland, Oregon (hereinafter referred to as "defendant Bank"). Said defendants are the executors named in said will, and letters testamentary were issued to them by said court on or about February 7, 1956. Defendant Davies, defendant Bank and defendant William W. Knight (hereinafter referred to as "defendant Knight") are named in said will



as trustees of a purported trust created under the terms thereof.

## VII.

The defendant Black White Foundation is sued herein under a fictitious name because its true name is not known to plaintiff, and plaintiff prays that when said true name is ascertained, he be permitted to amend this complaint in order to set forth said name. Upon information and belief, said Black White Foundation is or will be a corporation. If such corporation has been organized, it is a corporation organized under the laws of the State of Oregon, and it is a resident and citizen of said State. The exact facts concerning said corporation are not known to plaintiff, but are well known to all defendants.

## VIII.

Mrs. Jackson was the widow of Charles Samuel Jackson. Charles Samuel Jackson and Mrs. Jackson had two sons and no other children. These sons were Philip Ludwell Jackson and Francis Clopton Jackson. Philip Ludwell Jackson (hereinafter sometimes referred to as "Philip") had no issue. Francis Clopton Jackson had a son by the name of Charles Samuel Jackson, Jr. Said Francis Clopton Jackson died in 1919, and, shortly thereafter, at a date unknown to plaintiff, upon information and belief, Mrs. Jackson duly and regularly adopted Charles Samuel Jackson, Jr., as her own son according to the laws of the State of Oregon. Charles Samuel Jackson, Philip Ludwell



Jackson, Francis Jackson and Charles Samuel Jackson, Jr. predeceased Mrs. Jackson. Charles Samuel Jackson, Jr., left one child, who is the plaintiff herein.

### IX.

The "Oregon Journal," a daily newspaper published in Portland, Oregon, was founded by Mrs. Jackson's husband, Charles Samuel Jackson, approximately forty-five years ago. Charles Samuel Jackson during his lifetime was publisher and directed the policies of said Oregon Journal. Mrs. Jackson, both during the lifetime of Charles Samuel Jackson and thereafter, took great pride in and had great affection for said newspaper. It was therefore her constant preoccupation and desire to perpetuate and to keep control thereof within the Jackson family. The "Oregon Journal" is, and was at all times material herein, owned and published by the Journal Publishing Company, a corporation.

During his lifetime, Charles Samuel Jackson owned all, or the great majority, of the stock of the Journal Publishing Company, which, on his death, went to his widow, Mrs. Jackson. She retained this stock until her death.

### X.

Defendant Davies is a practicing attorney who was admitted to the bar of the State of Oregon in 1927. Defendant Davies was, at the time of Mrs. Jackson's death and for many years prior thereto, her personal attorney as well as an attorney for

said Journal Publishing Company and the Oregon Journal. As said attorney, defendant Davies had full information and knowledge respecting the nature and value of her properties, including her stock in said Journal Publishing Company. As said attorney, defendant Davies also knew of Mrs. Jackson's desires with respect to said "Oregon Journal." Upon information and belief, defendant Davies was also for many years, and until Philip's death, Philip's personal attorney.

## XI.

On information and belief: Mrs. Jackson reposed great trust and confidence in defendant Davies and had a very high regard for his legal and business ability, and she, therefore, sought and followed his counsel in connection with important family and business matters. Mrs. Jackson also reposed great trust and confidence in Philip and also had a high regard for his business ability, and she, therefore, sought and followed his counsel in connection with all said family and business matters.

## XII.

On information and belief: In making said will, dated January 7, 1948, mentioned in paragraph IV hereof, Mrs. Jackson sought and obtained the advice of Philip and defendant Davies. Defendant Davies is the person who drafted this will and its four codicils.

At the time that this will was under discussion, Philip and plaintiff were the only surviving lineal

descendants of Mrs. Jackson. Philip was then publisher of the Oregon Journal. He was in excess of fifty years of age, his exact age being unknown to plaintiff. He had never had any children. Accordingly, Mrs. Jackson desired, by means of her will, to provide generously for plaintiff and to give him the right and opportunity to come into control of said newspaper as owner, publisher and editor. Philip and defendant Davies were told by Mrs. Jackson of her desires with respect to plaintiff and were asked for their counsel and advice with regard thereto.

### XIII.

On information and belief: At or about the time that Mrs. Jackson sought their advice, as set forth in paragraph XII hereof, defendant Davies and Philip determined Mrs. Jackson would make a will under the terms of which plaintiff would receive nothing, and whereby they would obtain control of her assets, including her stockholdings in the Journal Publishing Company. Pursuant to said determination, Philip and defendant Davies represented to Mrs. Jackson that any disposition of her estate as she desired would result in an assessment of Federal estate taxes which could not be met without selling her shares in the Journal Publishing Company to outsiders who would then gain control of the "Oregon Journal." Philip and defendant Davies also represented to her that in order to preserve the "Oregon Journal," it would be necessary to avoid large estate taxes, and that this could be accomplished only by placing substantially all of

her estate in a tax-free foundation. These representations were and are untrue and known by defendant Davies to be untrue at the time they were made. These representations were either known to be untrue by Philip at said time, or were made negligently and without a reasonable effort to ascertain whether they were true or false.

These representations were and are untrue because said estate has, and had at all times herein material, sufficient assets to pay the Federal estate taxes which would have been assessed, had Mrs. Jackson made a will in accordance with her desires, without having to sell any of her said stockholdings in the Journal Publishing Company. These representations also were and are untrue because the "Oregon Journal" could have been maintained and perpetuated as desired by Mrs. Jackson by leaving her shares in the Journal Publishing Company, and no other property, to a tax-free beneficiary. Mrs. Jackson, because of the great trust and confidence which she reposed in Philip and defendant Davies, believed said representations and relied thereon at all times herein material.

Philip and defendant Davies, and each of them, pursuant to said determination and by means of said representations, induced Mrs. Jackson to execute a will, which would give the entire income of the estate to Philip for life and the remainder to a foundation, which they told Mrs. Jackson would receive the remainder of her estate, free of estate taxes, and in which no provision would be made for plaintiff. In order to accomplish the said pur-

pose, Philip and defendant Davies utilized the trust and confidence which she reposed in them and her fear, well known to them, that the "Oregon Journal" would fall into the hands of strangers, and out of the hands of the Jackson family. By so doing, they were able to and did overcome her volition to the extent that although she desired to provide for plaintiff as aforesaid, she, nevertheless, executed a will which reflected the purposes and desires of Philip and defendant Davies and not her own.

Philip had no desire to provide for anyone else out of his mother's estate. He had neither affection nor regard for plaintiff. By leaving the remainder interest to a supposedly tax-free foundation, and thereby attempting to free the value of said remainder from taxes, Philip expected to and planned to receive the largest possible income for life by minimizing the Federal estate taxes on his mother's estate, thereby preserving the maximum value for the corpus of the estate.

Having set the method of devolving the property of his mother, Philip acted in concert with defendant Davies by means unknown to plaintiff, but well known to defendant Davies, so that defendant Davies prepared a will to accomplish the purposes aforesaid and hereinafter alleged. In said will there was included a clause whereby Mrs. Jackson disinherited her great-grandson by blood and her adopted grandson (then approximately five years of age) in the manner set forth in Article VIII of said will of January 7, 1948.

The foundation was so planned that after the



death of Philip, defendant Davies, defendant Bank and a person selected by defendant Davies would, as trustees, control the foundation, the Oregon Journal, and the Journal Publishing Co. Defendant Davies was then, ever since has been, and now is an attorney for defendant Bank. The Jackson fortune and the prestige of a great newspaper were at all material times, and are now sources of power, influence, and prestige. The trustees holding said fortune and newspaper with plenary powers, and without substantial supervision or interference would be able to place themselves in a position of leadership and social and financial power by virtue of their said control. In addition, the position of trustee would be lucrative, yielding substantial fees for life. In addition, defendant Davies would, either directly or through others, act as legal counsel for the foundation, with additional substantial emoluments.

#### XIV.

In February, 1950, and August, 1952, Mrs. Jackson added codicils to her will, the subject of which was a gift to Stanford University. In the codicils, she ratified and confirmed all the provisions of said will dated January 7, 1948.

On February 27, 1953, after the death of Philip, Mrs. Jackson added a further codicil to her will. Under the terms thereof, she created a trust of One Hundred Fifty Thousand Dollars (\$150,000.00) for the benefit of plaintiff. The residue, comprising substantially all her estate, was left as in the will of January 7, 1948, to said foundation, of which

the defendant Davies was to be one of the trustees. In this codicil, defendant Davies is named co-executor of said will. By means of this instrument, Mrs. Jackson again ratified and confirmed the provisions of said will of January 7, 1948.

On July 8, 1953, Mrs. Jackson executed another codicil to her said will. This codicil contains a provision whereby defendant Davies would be one of a class of persons who, under a certain set of circumstances would be able to buy the stock of said Journal Publishing Company at prices substantially lower than might be obtained if such stock were sold to persons not included in said class. In this codicil, Mrs. Jackson again ratified and confirmed the provisions of her said will of January 7, 1948.

#### XV.

At no time was there ever a disclosure to Mrs. Jackson by any person whomsoever, as to the fact that the representations hereinabove set forth were untrue, although it was the duty of defendant Davies and also of Philip, if he had knowledge of such untruths, to so do. By this concealment, defendant Davies was able, after the death of Philip, to induce Mrs. Jackson, contrary to her natural inclinations, so to amend said will of January 7, 1948, by means of said codicils of February 27, 1953, and July 8, 1953, as to preserve and greatly enhance the privileges and emoluments which were provided for him in said will to the extent stated above. By this concealment, defendant Davies was also able to prevent Mrs. Jackson from making

a will under the terms of which plaintiff would have gained control of the "Oregon Journal," and a substantial portion of the balance of her estate. All of the representations and influences which motivated, induced, and caused the execution of the will of January 7, 1948, likewise induced, motivated and caused the republication of said will in said four codicils, in that nothing occurred in any manner to make Mrs. Jackson suspect or question the representations made to her; and defendant Davies continued to be her trusted and confidential attorney.

#### XVI.

Said Article VI of said purported will of January 7, 1948, ratified and confirmed by the codicils thereto, is not only invalid because it is the product of the undue influence and fraud above alleged, but also because the purposes of the purported charitable trust thereby attempted to be created, are so indefinite and uncertain, that the same cannot be executed and carried out, and because the discretion accorded to the trustees named therein is so wide and indefinite that their consciences cannot be held to the carrying out of a definite and certain purpose under the supervision of a court of equity.

#### XVII.

Upon information and belief: Article VI of said will of January 7, 1948, providing for a foundation, as republished in said codicils, and as amended by the codicils of February 27, 1953, and July 8, 1953, is invalid, and as to the property included in said



article, as republished and amended, Mrs. Jackson died intestate. As Mrs. Jackson's sole heir at law and next of kin, plaintiff, therefore, is entitled to inherit all of the residue of her estate. The invalidity of said article, as republished and amended lies in the fact that although it purports to create a charitable trust, uncertain and indefinite, as here alleged, it actually has for its purpose and achieves the results only of avoiding taxes and of creating a perpetual trust whereby a group of persons, self perpetuating by appointment, are vested with title to the controlling stock of a corporation, such stock being of a value in excess of One Million Dollars (\$1,000,000.00). Said corporation owns a great and powerful newspaper, which may, pursuant to the trust, be managed and controlled to serve the interests of the self-perpetuating trustees of said stock, with charity as a secondary and subordinate incident. The trustees are given plenary powers, without limitation as to the control, policy, and management of the newspaper; they may keep or sell it; the trustees may even sell stock to themselves upon preferred terms, as provided in the codicil of July 8, 1953. The provisions of said trust are against the public policy of the State of Oregon and create a perpetuity in violation of law.

### XVIII.

On information and belief: At some time subsequent to 1953, unknown to plaintiff, Mrs. Jackson determined to make certain that her wishes as to plaintiff would be carried out; i.e., that he would

come into control of the Oregon Journal and would also ultimately receive the bulk of her estate. She accomplished this by a new will or a codicil, a change in trust provisions, direction to trustees, or by some other means, all unknown to plaintiff. She made known to certain of her friends that she had completed such arrangements for plaintiff, but did not disclose the method whereby her purpose and desire had been accomplished. Such method is known to defendant Davies. By such method, the will and codicils above mentioned have been amended or revoked in such manner that plaintiff will receive far in excess of the One Hundred Fifty Thousand Dollars provided for him in the codicil of February 27, 1953.

### XIX.

Plaintiff does not contest the validity of Article I of the codicil of February 23, 1950, or Article I of the codicil of August 15, 1952, for the reasons hereinafter stated and also because the provisions of said articles are now of no force or effect. Plaintiff does not contest the validity of Article I or Article II of the codicil of February 27, 1953. As to Article I, the legacy to Kathryne Kelly has lapsed because she predeceased Mrs. Jackson. As to Article III, the same will be supererogatory upon adjudication that the will of January 7, 1948, and those portions of the first and second codicils under attack herein are void for any of the reasons stated in this complaint. Plaintiff does not contest the validity of Article I of the codicil of July 8, 1953.

Plaintiff does not contest the articles and portions thereof set forth above, not only for the specific reasons above stated, but also because, upon information and belief, plaintiff alleges that whatever is not contested herein represents the free and untrammelled will of Mrs. Jackson, unaffected by false representations, undue influence, illegality or violation of public policy.

Should it appear that, by any means whatsoever, whether by will, codicil or otherwise, the bequests to Eugene L. Carden in Article I of the codicil of February 27, 1953, and in Article I of the codicil of July 8, 1953, are invalid or ineffective, plaintiff hereby offers to do equity by making appropriate provision by stipulation or otherwise to the end that Eugene L. Carden shall receive whatever is left to him in said codicils. For the reasons stated in this paragraph, said Carden is not joined as defendant herein.

## XX.

In the codicil of February 27, 1953, Mrs. Jackson refers to the last will and testament of Philip, admitted to probate on February 24, 1953. A copy of said last will and testament is hereto annexed and marked "Exhibit B."

Wherefore, plaintiff prays judgment as follows:

1. That the purported will of Maria C. Jackson, dated January 7, 1948, be declared invalid.
2. That the contested portions of the four codicils to said will, as set forth above, be declared invalid.

3. That the trust attempted to be created by the will of Maria C. Jackson be declared invalid.

4. That it be declared that as to all property of any kind or character whatsoever not disposed of by the will of Maria C. Jackson, said Maria C. Jackson died intestate and that plaintiff is her sole heir-at-law and next of kin.

5. As to any method used by Maria C. Jackson to accomplish the purposes set forth in paragraph XVIII of this complaint, appropriate declaration and disposition be made, to the end that the purpose and intent of Maria C. Jackson, accomplished according to law, be made effective.

6. That plaintiff have such other further relief as to the court may seem meet and proper.

7. That plaintiff recover his costs herein incurred.

Dated this 3rd day of August, 1956.

/s/ JOHN E. WALKER,  
LIVINGSTON & BORREGARD,

/s/ By LAWRENCE LIVINGSTON,

/s/ RICARDO J. HECHT,  
Attorneys for Plaintiff.

[Exhibits A and B are similar to Exhibits A and B set out at pages 75-111 of this printed record.]

[Endorsed]: Filed August 3, 1956.

[Title of District Court and Cause.]

## AMENDMENT TO COMPLAINT

Plaintiff herein amends his complaint as hereinafter set forth, to-wit:

Amends paragraph XIX commencing on line 22 of page 11 and ending on line 19 of page 12 of the complaint by striking said paragraph XIX from the complaint, and inserting in lieu thereof the following:

### “XIX.

Plaintiff does not contest the validity of Article III of said will of January 7, 1948, which reads as follows:

### “Article III.

I give and bequeath to each person who shall be in my personal employ at the time of my death an amount equal to \$100 for each year or fraction thereof he or she shall have been in my employ.”

Plaintiff does not contest the validity of Article I of the codicil of February 23, 1950, or Article I of the codicil of August 15, 1952, because the provisions of said articles are now of no force or effect.

Plaintiff does not contest the validity of Article I or Article II of the codicil of February 27, 1953. As to Article I the legacy to Kathryn Kelly has lapsed because she was unrelated to Mrs. Jackson and predeceased Mrs. Jackson. As to Article III of the codicil of February 27, 1953, the same will become supererogatory upon adjudication that the will of January 7, 1948, and those portions of the



first and second codicils which are contested herein are void for any of the reasons stated in this complaint. Plaintiff does not contest the validity of Article I of the codicil of July 8, 1953.

As to any other parts of the will and codicils thereto which are not specifically excepted from the contest set forth in this complaint, plaintiff contests the same upon all of the grounds herein stated. As to the articles and portions thereof which are not contested, plaintiff alleges upon information and belief that they represent, at least to the extent of their contents and purposes, the free and untrammelled will of Mrs. Jackson unaffected by false representations, undue influence, illegality or violation of public policy.

Should it appear that by any means whatsoever, either by will, codicil or otherwise, the bequests to persons who were in the personal employ of Mrs. Jackson at the time of her death, as set forth in Article III of said will, or the bequests to Eugene L. Carden in Article I of the codicil of February 27, 1953, and in Article I of the codicil of July 8, 1953, are invalid or ineffectual for any reason, plaintiff hereby offers to do equity by making appropriate provision by stipulation or otherwise to the end that each person in the personal employ of Mrs. Jackson at the time of her death shall receive an amount equal to \$100 for each year or fraction thereof during which he or she should have been in the employ of Mrs. Jackson, and also to the end that Eugene L. Carden shall receive whatever is

bequeathed to him in said codicils. For the reasons stated in this paragraph said employees and said Carden are not joined as defendants herein.

Wherefore, plaintiff prays judgment as set forth in his complaint.

Dated this 21st day of August, 1956.

/s/ GLENN R. JACK,

/s/ JOHN E. WALKER,

LIVINGSTON & BORREGARD,

/s/ By LAWRENCE LIVINGSTON,

/s/ LAWRENCE LIVINGSTON,

/s/ RICARDO J. HECHT,

Attorneys for Plaintiff.

Designation of the place in Portland where notices and copies may be served herein: c/o John E. Walker, Corbett Building, Portland, Oregon.

[Endorsed]: Filed August 22, 1956.

[Title of District Court and Cause.]

### MOTION TO DISMISS

The defendants move the court to dismiss this action on the ground that the court lacks jurisdiction over the subject matter because the action is essentially a proceeding to contest a will and therefore one within the exclusive jurisdiction of the state probate courts.

Dated this 23rd day of August, 1956.

/s/ ROY F. SHIELDS,

/s/ RANDALL B. KESTER,

MAGUIRE, SHIELDS, MORRISON  
& BAILEY,

Attorneys for Defendants.

Acknowledgment of Service Attached.

[Endorsed]: Filed August 23, 1956.

---

[Title of District Court and Cause.]

### MEMORANDUM OF DECISION

Mathes, District Judge:

This cause is now before the court upon defendants' motion to dismiss "on the ground that the court lacks jurisdiction over the subject matter because the action is essentially a proceeding to contest a will and therefore one within the exclusive jurisdiction of the state probate courts."

Original federal jurisdiction has been invoked



solely upon the ground of claimed diversity of citizenship between the parties and the requisite amount in controversy. [28 U.S.C. § 1332(a).]

The jurisdictional facts, as alleged in the amended complaint and admitted by the pending motion, are briefly these: The testatrix, Maria C. Jackson, a citizen and resident of Oregon, died on February 3, 1956, leaving a will and certain codicils. On February 7, 1956, upon the ex parte petition of defendant executors, the will was admitted to probate, in "common form", by the appropriate State Court, the Probate Department of the Circuit Court of Multnomah County, Oregon, and letters testamentary were issued to defendant executors.

Following this ex parte admission to probate, plaintiff, a citizen of California and the minor great-grandson of the testatrix, brought this action by his guardian ad litem against the executors and the testamentary trustees under the will, all citizens of Oregon.

Concededly, then, complete diversity of citizenship exists between plaintiff and all defendants [Fed.R.Civ.P. 17(c); 28 U.S.C. § 1348], and the requisite amount is in controversy. [28 U.S.C. § 1332(a).]

The Constitution provides of course that federal "judicial Power shall extend to \* \* \* Controversies \* \* \* between Citizens of different States." [U.S. Const. art. III, § 2, cl. 1.]

However, Article III, § 2 "simply gives to the

\* \* \* courts the capacity to take jurisdiction \* \* \* It requires an act of Congress to confer it." [Kline v. Burke Construction Co., 260 U.S. 226, 234 (1922); Lockerty v. Phillips, 319 U.S. 182, 187 (1943).]

The Congress has conferred upon the district courts "original jurisdiction of all civil actions" in which diversity of citizenship and the requisite amount in controversy are present. [28 U.S.C. § 1332.]

Use of the term "civil actions" in the 1948 revision of Title 28 of the United States Code did not enlarge the jurisdiction of the district courts beyond that of the time-honored phrase "suits of a civil nature at common law or in equity" employed in the Judiciary Act of September 24, 1789. [1 Stat. 78; *Rosen v. Alleghany Corp.*, 133 F. Supp. 858, 865 (S.D.N.Y. 1955); Reviser's Note to 28 U.S.C. § 1332.]

In the case at bar plaintiff seeks an adjudication as to the validity, construction and alleged subsequent revocation of parts of a will, and as to heirship. The issues so tendered are "Controversies" [*Aetna Life Insurance Co. v. Haworth*, 300 U.S. 227, 240-41 (1937); *Fidelity Nat. Bank & Trust Co. v. Swope*, 274 U.S. 123 (1927); *Tutum v. United States*, 270 U.S. 568, 577 (1926)], clearly within the constitutional dimensions of "judicial Power" [cf. *Fontain v. Ravenel*, 58 U.S. (17 How.) 369, 391-92 (1854).]

However, these "Controversies" do not neces-

sarily fall within the scope of a "civil action" [28 U.S.C. §1332] "at common law or in equity" [1 Stat. 78 (1789)], over which the Congress has conferred jurisdiction upon this court.

In order to determine whether this diversity case can be counted among "all civil actions" within the meaning of 28 U.S.C. § 1332, it is necessary to consider the nature of the relief sought.

In the complaint as amended plaintiff asserts at least four separate claims or causes of action, but these are not stated separately. [Fed.R.Civ.P. 10(b).] First plaintiff seeks an adjudication that certain provisions of the Jackson will and codicils, which establish a testamentary trust, are invalid, because not the will of the testatrix, having been obtained by claimed acts of fraud and undue influence.

Second, plaintiff seeks a judgment declaring that, even if the trust provisions are the will of the testatrix, the testamentary trust is nonetheless invalid, because (a) the purpose of the trust is so indefinite and uncertain, and the powers of the trustees so broad and indefinite, that the trust cannot be enforced by a court of equity; and (b) the trust is perpetual in duration without being primarily charitable in character, and so is a perpetuity in violation of Oregon law.

Third, plaintiff seeks a judgment declaring that certain provisions of the will were amended or revoked by an alleged later, missing will or codicil;

and fourth, a decree that as to all property not found by the court to have been disposed of by will, the testatrix died intestate, leaving plaintiff as her sole heir and next of kin.

Unquestionably, then, all the relief sought in the case at bar is equitable in nature, and necessarily invokes the federal equity jurisdiction. So it is well to recall at the outset that "the general powers of Federal Courts when sitting as courts of equity \* \* \* can be exerted only in cases otherwise within the jurisdiction of those courts as defined by Congress". [Briggs v. United Shoe Mach. Co., 239 U.S. 48, 50 (1915).]

Since complete diversity of citizenship and the requisite amount in controversy are here present, this case is clearly one "otherwise within the jurisdiction of [this court] \* \* \* as defined by Congress." [Ibid.]

In *Twist v. Prairie Oil Co.*, 274 U.S. 684 (1927), Mr. Justice Brandeis declared for the Court that "the trial court \* \* \* may, of its own motion, take the objection that the case is not within the equity jurisdiction \* \* \* But that objection \* \* \* does not go to the power of the Court as a federal Court." [274 U.S. at 691.]

Therefore, the jurisdictional questions raised by the pending motion to dismiss are to be resolved by inquiring into "the general powers of Federal courts when sitting as courts of equity." [Briggs v. United Shoe Mach. Co., *supra*, 239 U.S. at 50.] Specifically,

the problem is to determine whether this court in the exercise of its equity jurisdiction has "the power, that is, the jurisdiction" [*Fauntleroy v. Lum*, 210 U.S. 230, 235 (1908)] to grant the relief prayed.

The equity jurisdiction of the federal district courts, and of the predecessor circuit courts, as it has existed since conferred by enactment of § 11 of the Judiciary Act of 1789 (1 Stat. 78), has never been held to exceed in scope that which the High Court of Chancery in England possessed in 1789. [*Atlas Ins. Co. v. W. I. Southern, Inc.*, 306 U.S. 563, 568 (1939); *Mississippi Mills v. Cohn*, 150 U.S. 202, 205 (1893); *Payne v. Hook*, 74 U.S. (7 Wall.) 425, 430 (1868); *Pennsylvania v. Wheeling & Belmont Bridge Co.*, 59 U.S. (18 How.) 460, 462 (1855).]

As the Court explained in *Atlas Ins. Co. v. W. I. Southern, Inc.*, *supra*: "The 'jurisdiction' thus conferred on the federal courts to entertain suits in equity is an authority to administer in equity suits the principles of the system of judicial remedies which had been devised and was being administered by the English Court of Chancery at the time of the separation of the two countries." [306 U.S. at 568.]

In 1789, after a will of personal property had been admitted to probate, an action to set aside the will, or parts thereof, upon the grounds of fraud or undue influence upon the testator, or the existence of a later will, was not within the jurisdiction of



England's High Court of Chancery, but was within the exclusive jurisdiction of the English ecclesiastical courts. [Barnesly v. Powel, 1 Ves. Sen. 284, 27 Eng. Rep. 1034 (Ch. 1749); Bennet vs. Vade, 2 Atk. 324, 26 Eng. Rep. 597 (Ch. 1742); Kerrich v. Bransby, 7 Brown's P.C. 437, 3 Eng. Rep. 284 (H.C. 1727); 1 Ballow, a Treatise of Equity 12 (1793); 2 id. 325, 379-80 (1794); 1 Holdsworth, A History of English Law 625-30 (7th ed. 1956); 5 id. 320 (2d ed. 1945); see, e.g.: Helyar v. Helyar, 1 Lee 472, 161 Eng. Rep. 174 (Prer. 1754); Lamkin v. Babb, 1 Lee 1, 161 Eng. Rep. 1 (Prer. 1752).]

In those eighteenth century days, moreover, wills of real property were not even admitted to probate; and an action to set aside a will of real property, like an action to set aside a deed, was tried at law. [Webb vs. Claverden, 2 Atk. 424, 26 Eng. Rep. 656 (Ch. 1742); Kerrich v. Bransby, *supra*, 7 Brown's P.C. 437, 3 Eng. Rep. 284; Mariott v. Mariott, 1 Strange 666, 93 Eng. Rep. 770 (Ch. 1726); 1 Ballow, *op. cit. supra*, at 12.]

Thus it was that, in 1789, the jurisdiction of the English High Court of Chancery did not embrace suits to set aside wills of either real or personal property, either because of fraud or undue influence upon the testator, or because of the existence of a later will.

This want of jurisdiction of the English Court of Chancery, and of the federal courts of equity since 1789, has often been noted by the Supreme Court; and "by a series of decisions it has been

established that since it does not pertain to the general jurisdiction of a court of equity to set aside a will or the probate thereof, or to administer upon the estates of decedents in rem, matters of this character are not within the ordinary equity jurisdiction of the federal courts \* \* \*” [Sutton v. English, 246 U.S. 199, 205 (1918); Farrell v. O’Brien, 199 U.S. 89, 110 (1905); Broderick’s Will, 88 U.S. (21 Wall.) 503, 517, 520 (1874); accord: Markham v. Allen, 326 U.S. 490, 494 (1945); Ellis v. Davis, 109 U.S. 485, 494 (1883).]

As explained in an earlier opinion: “In cases of fraud, equity has a concurrent jurisdiction with a court of law, but in regard to a will charged to have been obtained through fraud, this rule does not hold. It may be difficult to assign any very satisfactory reason for this exception. That exclusive jurisdiction over the probate of wills is vested in another tribunal, is the only one that can be given.” [Gaines v. Chew, 43 U.S. (2 How.) 619, 645 (1844).]

In Markham v. Allen, *supra*, Mr. Chief Justice Stone declared for the Court: “It is true that a federal court has no jurisdiction to probate a will or administer an estate, the reason being that the equity jurisdiction conferred by the Judiciary Act of 1789 \* \* \* which is that of the English Court of Chancery in 1789, did not extend to probate matters.” [326 U.S. at 494.]

Supreme Court interpretation of the limits of the congressional grant of equity jurisdiction has been made “in the light of the tacit assumptions upon

which it is reasonable to suppose the language was used." [Ohio ex rel. Popovici v. Agler, 280 U.S. 379, 383 (1930).] These "tacit assumptions" undoubtedly took note of the accumulated experience of the English courts of 1789 in determining which rights, involving decedents' estates, might be enforced in personam in Chancery, without interfering with the ecclesiastical court's possession of decedents' estates; and the apparent acceptance by the Congress of the 1789 American status quo, which held the concept that "the authority to make wills is derived from the State" [Farrell v. O'Brien, supra, 199 U.S. at 110].

There are considerations of policy too which further limit the scope of federal equity jurisdiction, and especially so where "the power of the Court as a federal court" [Twist v. Prairie Oil Co., supra, 274 U.S. at 691] depends upon diversity of citizenship [28 U.S.C. § 1332].

A federal court will not, as a matter of comity, proceed to a judgment in rem or quasi in rem, if jurisdiction over the res has previously been acquired by and continues in a State court; but may proceed to judgment in personam, adjudicating rights in the res and leaving the in personam judgment to bind as res judicata the court having jurisdiction of the res. [Markham v. Allen, supra, 326 U.S. at 494; Pufahl v. Estate of Parks, 299 U.S. 217, 226 (1936); United States v. Bank of New York, 296 U.S. 459, 477-78 (1936); Kline v. Burke Construction Co., supra, 260 U.S. 226; Sutton v.



English, *supra*, 246 U.S. at 205; *Waterman v. Canal-Louisiana Bank & Trust Co.*, 215 U.S. 33, 44 (1909); *Yonley v. Lavender*, 88 U.S. (21 Wall.) 276 (1874).]

The repeated assertion of this principle of comity has made it a "rule of general application" [*Byers v. McAuley*, 149 U.S. 608, 614 (1892)], but the particular application of it remains, as with other discretionary refusals to exercise jurisdiction, a "question \* \* \* of discretion in every case" [*The Maggie Hammond*, 76 U.S. (9 Wall.) 435, 457 (1869)].

The justification for this policy refusal to exercise federal jurisdiction in rem, in cases where the State court has prior jurisdiction of the res, is "to avoid unseemly and disastrous conflicts in the administration of our dual judicial system, \* \* \* and to protect the judicial processes of the court first assuming jurisdiction" [*Penn General Casualty Co. v. Pennsylvania*, 294 U.S. 189, 195 (1935)]; since "to give effect to its jurisdiction, the court must control the property. The doctrine is necessary to the harmonious cooperation of the federal and state tribunals" [*Princess Lida v. Thompson*, 305 U.S. 456, 466 (1938)].

The applicability of the principle to cases involving decedents' estates is most compelling when it is borne in mind that: "The public interest requires that the estates of deceased persons, being deprived of a master, and subject to all manner of claims, should at once devolve to a new and competent ownership; and, consequently, that there should be some

convenient jurisdiction and mode of proceeding by which this devolution may be effected with least chance of injustice and fraud; and that the result attained should be firm and perpetual." [Broderrick's Will, *supra*, 88 U.S. (21 Wall.) at 509.]

In the case at bar then, the Jackson estate being now in process of probate in the Oregon state court, this court would not, as a matter of comity, proceed to a judgment in rem, even to grant relief clearly within the federal equity jurisdiction; but would proceed only "where the final judgment does not undertake to interfere with the state court's possession save to the extent that the state court is bound by the judgment to recognize the right adjudicated by the federal court." [Markham v. Allen, *supra*, 326 U.S. at 494.]

Moreover, since *Erie R. R. v. Tompkins*, 304 U.S. 64 (1938), there is to be considered the further policy limitation that, inasmuch as "a federal court adjudicating a state-created right solely because of the diversity of citizenship of the parties is for that purpose in effect only another court of the State" [Guaranty Trust Co. v. York, 326 U.S. 99, 108 (1945)], federal diversity jurisdiction, even over suits in equity which fall within the scope of 1789 jurisdiction of the English High Court of Chancery, should be disavowed as to actions "to which the State had closed its courts" [Woods v. Interstate Realty Co., 337 U.S. 535, 537 (1949); Griffin v. McCoach, 313 U.S. 498, 507 (1941); cf. Williams v.

Minnesota Mining & Mfg. Co., 14 F.R.D. 1, 9 (S.D. Cal. 1953)].

Permissive disavowal of federal diversity jurisdiction is not without limits, of course; for the Supreme Court has repeatedly decided "that the jurisdiction of the courts of the United States over controversies between citizens of different States cannot be impaired by the laws of the states \* \* \* which regulate the distribution of their judicial power." [Hyde v. Stone, 61 U.S. (20 How.) 170, 175 (1857); Payne v. Hook, *supra*, 74 U.S. (7 Wall.) at 430; McClellan v. Carland, 217 U.S. 268, 281 (1910); Waterman v. Canal-Louisiana Bank & Trust Co., *supra*, 215 U.S. at 43; Arrowsmith v. Gleason, 129 U.S. 86, 98, 101 (1888); Gaines v. Fuentes, 92 U.S. 10 (1875); Broderick's Will, *supra*, 88 U.S. (21 Wall.) at 520; Looney v. Capital Nat. Bank, 235 F.2d 436, 437 (5th Cir.), cert. denied, 352 U.S. 925 (1956).]

Thus it is that although "the essence of diversity jurisdiction is that a federal court enforces State law and State policy" [Angel v. Bullington, 330 U.S. 183, 191 (1947); Griffin v. McCoach, *supra*, 313 U.S. at 507], the federal courts may entertain actions, within their diversity and historic-equity jurisdiction, involving claims to decedents' estates, "notwithstanding the fact that the laws of the State \* \* \* limit the right to establish such demands to a proceeding in the probate courts of the State" [Security Trust Co. v. Black River Nat. Bank, 187 U.S. 211, 227 (1902); cf: Griffith v. Bank of New

York, 147 F.2d 899 (2d Cir.), cert. denied, 325 U.S. 874 (1945); *Blacker v. Thatcher*, 145 F.2d 255, 257 (9th Cir. 1944)].

In *Payne v. Hook*, *supra*, the Court explained: "The equity jurisdiction conferred on the Federal Courts is the same that the High Court of Chancery in England possesses; is subject to neither limitation or restraint by State legislation, and is uniform throughout the different States of the Union." [74 U.S. (7 Kall.) at 430; cf: *Ohio ex rel Popovici v. Agler*, *supra*, (divorce) 280 U.S. at 383-84; *Barry v. Mercein*, (custody) 46 U.S. (4 How.) 103, 119-20 (1847); *Albanese v. Richter*, (support) 161 F.2d 688, 689 (3rd Cir.), cert. denied, 332 U.S. 782 (1947).]

If then a right involving a decedent's estate is such as would have been enforceable in the English Court of Chancery in 1789, and is such as would be enforceable in an action in personam in some court—even a probate court—of the State, a suit to enforce that right may be maintained in a federal court of equity as an action in personam, if diversity of citizenship and the requisite jurisdictional amount exist. [*Markham v. Allen*, *supra*, 326 U.S. at 494; *Waterman v. Canal-Louisiana Bank & Trust Co.*, *supra*, 215 U.S. at 43; *Payne v. Hook*, *supra*, 74 U.S. (7 Wall.) at 430; *id.* 81 U.S. (14 Wall.) 252 (1871).]

On the other hand, if a right involving a decedent's estate is by state law made enforceable in an action in personam in a State court—rather than

solely in rem in probate proceedings, a diversity suit to enforce the right in the federal courts is a "civil action" within 28 U.S.C. § 1332.

This was the ground upon which jurisdiction was sustained in Broderick's Will, *supra*, where the Court said: "Whilst it is true that alterations in the jurisdiction of the State courts cannot affect the equitable jurisdiction of the Circuit [District] Courts of the United States, so long as the equitable rights themselves remain, yet an enlargement of equitable rights may be administered by the Circuit [District] Courts, as well as by the courts of the State." [88 U.S. (21 Wall.) at 520.]

So it is that "where a State, by statute or custom, gives to parties interested the right to bring an action \* \* \* to annul a will or to set aside the probate, the courts of the United States, where diversity of citizenship and a sufficient amount in controversy appear, can enforce the same remedy, but \* \* \* this relates only to independent suits, and not to procedure merely incidental or ancillary to the probate \* \* \*" [Sutton v. English, *supra*, 246 U.S. at 205.]

State-created means for the enforcement of a right involving a decedent's estate by a plenary suit or action in personam, rather than in rem in probate proceedings, will be recognized in the federal courts in diversity cases, regardless of whether the state-created means be denominated a state-created right or a state-created remedy. [Sutton v. English, *supra*, 246 U.S. at 205; Farrell v. O'Brien, *supra*,



199 U.S. at 110; *Ellis v. Davis*, *supra*, 109 U.S. at 494-97; *Broderick's Will*, *supra*, 88 U.S. (21 Wall.) at 519-20; *Looney v. Capital Nat. Bank*, *supra*, 235 F.2d at 438; *McClendon v. Straub*, 193 F.2d 596 (5th Cir. 1952); *Sawyer v. White*, 122 Fed. 223, 227 (8th Cir. 1903); *Williams v. Crabb*, 117 Fed. 193 (7th Cir.), cert. denied, 187 U.S. 645 (1902); *McCan v. First Nat. Bank*, 139 F.Supp. 224 (D.Ore. 1954), *aff'd*, 229 F.2d 859 (9th Cir. 1956); accord: *Gaines v. Fuentes*, *supra*, 92 U.S. at 21; *Richardson v. Green*, 61 Fed. 432 (9th Cir.), cert. denied, 159 U.S. 264 (1894); cf: *Pusey & Jones Co. v. Hanssen*, 261 U.S. 491, 497-98 (1923).]

Accordingly, the next question to be confronted is whether the law of Oregon admits of a plenary suit or action in personam, in which plaintiff at bar might set aside the Jackson will or the admission to probate, either upon the ground of undue influence or fraud, or upon the ground that the will admitted to probate is not the last will of the testatrix.

In Oregon, "when a will has been admitted to probate, any person interested may, at any time within six months after \* \* \* the order of court admitting such will to probate, contest the same or the validity of such will \* \* \*" [ORS 115.180]; and "any \* \* \* person interested in the estate, may, at any time after the death of the testator, petition the court having jurisdiction to have the will proved, whether the same is in his possession or not, or is lost or destroyed \* \* \*" [ORS 115.120].

Although the court in which an action or proceed-

ing may be brought to contest the admission to probate or the validity of a will is not named in ORS 115.180, the Oregon courts have consistently held that jurisdiction over will contests is included within the exclusive original jurisdiction of the court admitting the will to probate. *Florey v. Meeker*, 194 Ore. 257, 240 P.2d 1177, 1187 (1952); *In re Riggs' Estate*, 120 Ore. 38, 241 Pac. 70 (1925), 250 Pac. 753 (1936); *In re Dunn's Will*, 88 Ore. 416, 171 Pac. 1173 (1918); *Simpson v. Durbin*, 68 Ore. 518, 136 Pac. 347 (1913); *Mansfield v. Hill*, 56 Ore. 400, 107 Pac. 474 (1919).]

Even before jurisdiction over will contests was specifically conferred by original ORS 115.180, passed in 1893, the Oregon courts had already included will contests as being within the scope of the exclusive jurisdiction of County Courts of Oregon: "To take proof of wills \* \* \* [and] grant and revoke letters testamentary \* \* \*." [Act of 1862, now found in ORS 5.040; *Bain v. Cline*, 24 Ore. 175, 33 Pac. 542 (1893); *Rothrock v. Rothrock*, 22 Ore. 551, 30 Pac. 453 (1892); *Potter v. Jones*, 20 Ore. 239, 25 Pac. 769 (1891); *Luper v. Werts*, 19 Ore. 122, 23 Pac. 850 (1890); *Chrisman v. Chrisman*, 16 Ore. 127 (1888); *Clark v. Ellis*, 9 Ore. 128, 132 (1881); *Brown v. Brown*, 7 Ore. 286, 299-300 (1879); *Greenwood v. Cline*, 7 Ore. 1, 2 (1879).]

So it is that, if plaintiff at bar were to seek, in the Oregon courts, to contest the validity of the Jackson will or to revoke the admission to probate upon the grounds here alleged, he would find a rem-



edy only in the State court which has admitted the will to probate, namely, the probate court. Plaintiff would also find, were he successful in the state-court action, that the judgment or decree would declare not only that the "will is set aside, declared void or inoperative, [but also that] \* \* \* letters [testamentary] shall be revoked and letters of administration issued." [ORS 115.200.]

In order to possess the jurisdiction or power to grant such extensive relief, the court must hear and determine any petition questioning the will in a proceeding in rem, directly affecting the administration of the decedent's estate. For "in case of a judgment, decree or order \* \* \* in respect to the probate of a will or the administration of the estate of a deceased person \* \* \* the judgment, decree or order is conclusive upon \* \* \* the will or administration \* \* \*." [ORS 43.130.]

Thus actions in Oregon questioning the validity of a will, or its admission to probate, have retained the traditional in rem character of proceedings in probate directly affecting the decedent's estate—the res [In re Anderson's Estate, 157 Ore. 365, 71 P.2d 1013, 1015 (1936); In re Rigg's Estate, *supra*, 120 Ore. 38, 241 Pac. at 71; Mansfield v. Hill, *supra*, 56 Ore. 400, 107 Pac. 474; Hubbard v. Hubbard, 7 Ore. 43, 44 (1879); Jones v. Dove, 6 Ore. 189 (1876)]; and have remained within the exclusive jurisdiction of the probate courts of Oregon [see e.g.: In re Frederick's Estate, 204 Ore. 378, 282 P.2d 352 (1955); In re Ulrich's Estate, 194 Ore. 429, 242

P.2d 204 (1952); *In re Porter's Estate*, 192 Ore. 483, 235 P.2d 894 (1951)].

The in rem character of such an action in the State court is determined of course by the court's jurisdiction over the res and the res judicata effect of its judgment upon the world; hence the fact that the petition seeking revocation of the probate of a will may be filed only after the initial ex parte admission to probate [ORS 115.180] does not destroy the continuity of the in rem proceedings in the probate court. Nor does the difference between the notice requirements applicable to the initial petition to probate [ORS 116.505], and the petition to revoke probate [ORS 115.010], affect the essential in rem character of the jurisdiction of the probate court in taking both actions. [Cf. *Spencer v. Watkins*, supra, 169 Fed. at 382.]

It should be noted, moreover, that in Oregon an action attacking only a part rather than the entire will nonetheless invokes the in rem jurisdiction of the probate court, since it will result in either setting aside or reaffirming the admission to probate of the challenged provisions of the will. [*In re Allen's Estate*, 116 Ore. 467, 241 Pac. 996, 1006 (1925).]

Even though the in rem nature of the action were not apparent from the probate court's continuing jurisdiction over the res and the scope and effect of its judgment, the very character of the exclusive and limited jurisdiction of the probate courts of Oregon requires the same conclusion.

The Oregon constitution of 1857 vested judicial power “in a supreme court, circuit courts, and a county court, which shall be courts of record having general jurisdiction to be defined \* \* \*” [Ore. Const. art. VII, § 1 (1857)]; and conferred upon the circuit courts “all judicial \* \* \* jurisdiction not vested \* \* \* exclusively in some other court \* \* \*” [id. § 9].

Although the 1857 constitution defines the County Court as a court “having general jurisdiction” [id. § 1], it has been consistently held that Oregon courts exercising probate jurisdiction are merely “courts of general jurisdiction within their [probate] field” [In re Stroman’s Estate, 178 Ore. 100, 165 P.2d 576, 581 (1946); Tustin v. Gaunt, 4 Ore. 305, 308-9 (1873)]. For “the nature and extent of their jurisdiction depend upon the statute [and the constitution], and they possess no other or greater powers than so conferred.” [Johnson v. Shofner, 23 Ore. 111, 31 Pac. 254, 256 (1892).]

Thus the probate courts of Oregon have “no original equity jurisdiction” [ibid.; see also: Arnold v. Arnold, 193 Ore. 490, 237 P.2d 963 (1952); In re Elder’s Estate, 160 Ore. 111, 83 P.2d 477, 478 (1938); Weill v. Clark’s Estate, 9 Ore. 387, 391 (1881); Burnside v. Savier, 6 Ore. 154, 156 (1876)]; nor “common-law jurisdiction” [in re Stroman’s Estate, *supra*, 178 Ore. 100, 165 P.2d at 581].

By a series of statutes enacted in 1919, 1929, and 1949, the Oregon legislature, under the power conferred by the 1910 amendment of Article VII of the

State Constitution, transferred probate jurisdiction in certain judicial districts from the County Court to the Circuit Court. By one of these enactments, the legislature conferred upon the Circuit Court of Multnomah County, Oregon, "full, complete, general and exclusive jurisdiction, authority and power in equity, in the first instance, in all matters whatsoever pertaining to a court of probate, including the construing of, and declaration of rights under wills and codicils, and therein the determining of question of title to real, personal or mixed property \* \* \*." [ORS 3.340.]

The obvious question posed by these statutes is whether this transfer of probate jurisdiction, from a court of limited jurisdiction, albeit one of general jurisdiction in the exercise of probate jurisdiction, to a court of general jurisdiction, operated to change the nature of an action in probate court from a limited and statutory proceeding in rem to an action in personam.

The answer has been provided by the Supreme Court of Oregon in *Arnold v. Arnold*, supra, 193 Ore. 490, 237 P.2d 963, 968-70 (1952), where it was held that although the legislature, in transferring probate jurisdiction from the County Court to the Circuit Court of Multnomah County, added jurisdiction to construe wills of real and mixed property as well as personal property, the Circuit Court, when sitting in probate—like the County Court before it—possesses only a limited and statutory probate jurisdiction, without general legal or equitable

power. [Cf: *In re Pittock's Will*, 102 Ore. 159, 199 Pac. 633, 102 Ore. 47, 201 Pac. 428, 103 Ore. 222, 202 Pac. 104 (1921); *In re Johnson*, 100 Ore. 142, 196 Pac. 385 (1921).]

Thus, the Circuit Court of Multnomah County, when sitting in probate, possesses no jurisdiction of controversies which do not "grow out of the provisions of a will, and [in which] the court \* \* \*[is] not called upon to construe or declare rights under a will" [*Arnold v. Arnold*, *supra*, 193 Ore. 490, 237 P.2d at 970]; for only such controversies fall within the terms of the statute conferring probate jurisdiction [ORS 3.340; cf: *Wadhams & Co. v. State Tax Commission*, 202 Ore. 132, 273 P.2d 440, 442 (1954); *Ashford v. Ashford*, 201 Ore. 206, 268 P.2d 382, 385 (1954); *Ex parte Quinn*, 192 Ore. 254, 233 P.2d 767, 772 (1951)].

This is true even though the legislature conferred this limited probate jurisdiction "not upon the probate department of the circuit court but upon the Circuit Court for Multnomah County." [*McCulloch v. United States Nat. Bank*, 207 Ore. 508, 297 P.2d 1076 (1956).]

In his effort to sustain federal equity jurisdiction in the case at bar, plaintiff places heavy reliance upon *Richardson v. Green*, *supra*, 61 Fed. 423, as establishing the Ninth Circuit's interpretation of the nature of Oregon-will-contest jurisdiction. However, this case contains jurisdictional questions only superficially similar to those raised in the case at bar.



At the time the complaint in *Richardson v. Green* was filed and federal diversity jurisdiction attached [*Saint Paul Mercury Ind. Co. v. Red Cab Co.*, 303 U.S. 283 (1938); *Louisville etc. Ry. v. Louisville Trust Co.*, 174 U.S. 552, 566 (1899); *Dunn v. Clarke*, 33 U.S. (8 Pet.) 1, 2 (1834); *Mullen v. Torrance*, 22 U.S. (9 Wheat.) 537, 538 (1824); *Anderson-Thompson, Inc. v. Logan Grain Co.*, 238 F.2d 598 (10th Cir. 1956)], plaintiff there was seeking an adjudication that both a deed, and a will devising "certain real estate" were forgeries. The purported will had not as yet been admitted to probate, or even offered for probate.

The Circuit Court of Appeals affirmed the trial court's decision that federal diversity jurisdiction over the subject matter of the suit was present, inasmuch as the causes of action alleged, both as to the deed and as to the unprobated will, were "suits in equity" cognizable in the Circuit Court of Oregon—a state court of general jurisdiction.

The attack upon the deed would ordinarily have been the subject of an action at law in the state or federal courts; but because the grantee's right of curtesy rendered any remedy at law inadequate, the case fell within equity jurisdiction. [*Richardson v. Green*, *supra*, 61 Fed. at 429.]

Since "by the law in almost all the States, no instrument can be effective as a will until proved" [*Ellis v. Davis*, *supra*, 109 U.S. at 497], the attack in *Richardson v. Green* upon the validity of the will, as yet unproved in the probate court, was

within the historic in personam jurisdiction of courts of equity—including the English High Court of Chancery in 1789—to set aside all forged instruments or muniments, as forged deeds. [Gaines v. Fuentes, *supra*, 92 U.S. at 17, 20; Meister v. Finley, 62 A.O. 1439, 300 P.2d 778 (1956); Mansfield v. Hill, *supra*, 56 Ore. 400, 107 Pac. 471; see also: Bennet v. Wade, *supra*, 2 Atk. 324, 26 Eng. Rep. 597; James v. Greaves, 2 P. Wms. 270, 24 Eng. Rep. 726 (K.B. 1725).]

Upon the particular facts of the Richardson case, then, the decision was an unnecessary [Gaines v. Fuentes, *supra*, 92 U.S. 10], but nonetheless correct view of Oregon equity jurisdiction. For a “suit for contesting a will \* \* \* in Oregon [such as the unproved will in Richardson] is undoubtedly one between parties, and binding only the parties thereto, and hence is such a one as a circuit court of the United States could take jurisdiction of”, where diversity of citizenship exists and the requisite amount is in controversy. [Richardson v. Green, *supra*, 61 Fed. at 428.] But the holding may not correctly be extended to include the dictum as to actions to set aside wills “after the probating of the same in Oregon.” [Ibid.]

If it be assumed, however, that this dictum is properly to be considered as within the decision, there remains to be recalled the fact that, while the Richardson case was pending, the Oregon legislature enacted the Act of 1893 [now found in ORS 115.180] providing: “When a will has been admitted



to probate, any person interested may, \* \* \* after \* \* \* the order of court admitting such will to probate, contest the same or the validity of such will \* \* \*” While the enactment just quoted does not so specify, this legislation has since been interpreted by the Oregon courts as conferring exclusive jurisdiction over such will contests upon the probate courts as such, at that time solely the County Courts—and not upon the Oregon courts of general equitable jurisdiction, the Circuit Courts. [Florey v. Meeker, *supra*, 194 Ore. 257, 240 P.2d 1177, 1187.]

It follows, then, that as to the first and third claims or causes of action to declare invalid parts of the Jackson will and the codicils thereto, by reason of alleged fraud and undue influence, and revocation by a subsequent will, plaintiff has failed to allege, and cannot allege the existence of “grounds upon which the court’s jurisdiction depends.” [Fed.R.Civ.P. 8(a,b); *KVOS, Inc. v. Associated Press*, 299 U.S. 269, 278 (1936); *McNutt v. General Motors etc. Corp.*, 298 U.S. 178, 189 (1936); *Seslar v. Union Local 901, Inc.*, 186 F.2d 403, 407 (7th Cir.), cert. denied, 341 U.S. 940 (1951).]

However, that portion of plaintiff’s second cause of action which seeks to have construed and declared invalid the trust provisions contained in the will, as being contrary to the law and the public policy of Oregon, is found to be within the historic scope of federal equity jurisdiction. [*Waterman v. Canal-Louisiana Bank & Trust Co.*, *supra*, 215 U.S. at 45-46; *Blacker v. Thatcher*, *supra*, 145 F.2d at

257-58; *Chicago Bank of Commerce v. McPherson*, 62 F.2d 693, 694 (6th Cir.), cert. denied, 289 U.S. 736 (1932); accord: *Gaines v. Fuentes*, supra, 92 U.S. at 21; *Spencer v. Watkins*, 169 Fed. 379 (8th Cir. 1909); XII Holdsworth, op. cit. supra at 686-89 (1st ed. 1938); IV Pomeroy, *Equity Jurisprudence* §§ 1155-58 (5th ed. 1941); cf: *Looney v. Capital Nat. Bank*, supra, 235 F.2d 436; *Rice v. Sayers*, 198 F.2d 724, 725 (10th Cir.), cert. denied, 344 U.S. 877 (1952); *Lee v. Minor*, 260 F.2d 700 (9th Cir.), cert. denied, 253 U.S. 488 (1919); *Simler v. Wilson*, 110 F.Supp. 761, 763 (W.D.Okla.), rev'd, 210 F.2d 99, 102 (10th Cir. 1953), rev'd per curiam, 350 U.S. 892 (1955) (semble); *Ferguson v. Patterson*, 191 F.2d 584 (10th Cir. 1951).]

And since "every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if such party has not demanded such relief in his pleadings" [Fed.R.Civ.P. 54(c)], plaintiff's complaint as amended may also be regarded as an action to impose a constructive trust upon the ground of the fraud of the executors, allegedly perpetrated in petitioning for admission to probate of a prior will while withholding a later, missing will or codicil from the probate court. Viewed in this light, that portion of plaintiff's third cause of action may be construed to fall within the equity jurisdiction of this court. [*Gaines v. Chew*, supra, 43 U.S. (2 How.) at 645; *Patterson v. Dickinson*, 193 Fed. 328, 333-34 (9th Cir. 1912); *McCan v. First Nat. Bank*, supra, 139 F.Supp. at 227; see

also *Barnesly v. Powel*, supra, 1 Ves. Sen. 284, 27 Eng. Rep. 1034.]

Furthermore, that portion of plaintiff's fourth cause of action, which asserts that, as to all property not disposed of by will, the testatrix died intestate leaving plaintiff as her sole heir and next of kin, also falls within the scope of federal equity jurisdiction to adjudicate in personam the validity and amount of claims of heirs and others, to estates in probate. [*Markham v. Allen*, supra, 326 U.S. at 494 (alternative holding); *Sutton v. English*, supra, 246 U.S. at 205; *McClellan v. Carland*, supra, 217 U.S. at 281; *Waterman v. Canal-Louisiana Bank & Trust Co.*, supra, 215 U.S. at 45; *Payne v. Hook*, supra, 74 U.S. (7 Wall.) 425; cf. *Strickland v. Peters*, 120 F.2d 53 (5th Cir. 1941).]

Inasmuch as plaintiff's second and fourth causes of action, and the third cause of action insofar as it may seek to impress a constructive trust, are within the scope of federal equity jurisdiction, next to be considered is the problem whether "the facts stated in the present bill lay a sufficient ground for equitable interference with the probate of [the Jackson] \* \* \* will, or for establishing a trust in favor of the \* \* \* plaintiff." [*Broderick's Will*, supra 88 U.S. (21 Wall.) at 517.]

For it is the duty of the court to determine at the outset "whether in any given instance a suit of which a district court has jurisdiction as a federal court is an appropriate one for the exercise of the extraordinary powers of a court of equity."

[Atlas Life Ins. Co. v. W. I. Southern, Inc., *supra*, 306 U. S. at 570; Alabama Public Service Comm'n v. Southern Ry., 341 U.S. 341, 345 (1951); Meredith v. Winter Haven, 320 U.S. 228, 234-35 (1943); Di Giovanni v. Camden Fire Ins. Ass'n, 296 U.S. 64, 69 (1935); Twist v. Prairie Oil Co., *supra*, 274 U.S. at 690-91; Massachusetts State Grange v. Benton, 272 U.S. 517, 228 (1926); Reynes v. Dumont, 130 U.S. 354, 395 (1889); Payne v. Hook, *supra*, 74 U.S. (7 Wall.) at 430.]

If the case does not warrant the exercise of the court's equitable powers, this fact, "if obvious, may and should be objected to by the court of its own motion." [Matthews v. Rodgers, 284 U.S. 521, 524 (1932); Singer Sewing Machine Co. v. Benedict, 229 U.S. 481, 484 (1913); Lewis v. Cocks, 90 U.S. (23 Wall.) 466, 470 (1874).]

At this juncture, it should be recalled that, by his second cause of action, plaintiff seeks this court's construction of the terms of the testamentary trust, which plaintiff alternatively seeks to set aside as invalid for fraud and undue influence upon the testatrix. Being without jurisdiction over the issue as to the validity of the testamentary trust itself, this court does not, in the exercise of equity jurisdiction, reach the alternative, and in effect subsidiary, cause of action to construe the provisions of the trust.

For "a court of equity ought to do justice completely, and not by halves." [Camp v. Boyd, 229 U.S. 530, 551 (1913).] Although this maxim has been

used most frequently to extend equity "clean-up" jurisdiction over aspects of a controversy of legal cognizance [*United States v. Union Pacific Ry.*, 160 U.S. 1, 52 (1895)], the maxim is properly applied here, and with equal force.

Until validity of the testamentary trust provisions has been finally adjudicated in the probate court of Oregon [ORS 115.180], this court could not "do justice completely", and instead would be compelled to do justice "by halves", which in equity it will not do. [*Waterman v. Canal-Louisiana Bank & Trust Co.*, supra, 215 U.S. at 46; *Walker v. First Trust & Sav. Bank*, 12 F.2d 896 (8th Cir. 1926); *Spencer v. Watkins*, supra, 169 Fed. at 382; *Wood v. Paine*, 66 Fed. 807 (C.C.D.R.I. 1895); *Gebhard v. Lennox Library*, 74 N.H. 416, 68 Atl. 540 (1907).]

The same situation exists with respect to plaintiff's fourth cause of action. Hence this court, in the exercise of its equity jurisdiction, does not reach the secondary and auxiliary claim for an adjudication of heirship in the event of partial intestacy. [See: *Sutton v. English*, supra, 246 U.S. at 207; cf. *Markham v. Allen*, supra, 326 U.S. at 495.] Moreover, because of lack of federal equity jurisdiction to adjudicate the issues as to validity of the will and codicils, as sought in the first and third causes of action, the claim of heirship does not now present a justiceable controversy—a "Controversy" within the meaning of the Constitution. [U. S. Const. art. III, § 2, cl. 1; *Aetna Life Ins. Co. v. Haworth*, supra, 300 U.S. at 240-41.]



Insofar as the third cause of action asserts a claim to have declared a constructive trust, which is not the main purpose of this action but merely an incidental aspect of the whole controversy, this court, being without equity jurisdiction to adjudicate the principal controversy, will refuse, as a matter of discretion, to exercise equity jurisdiction to adjudicate the subsidiary claim of fraud upon the probate court of Oregon, in the alleged suppression of a later, missing will or codicil. [Ellis v. Davis, *supra*, 109 U.S. at 503-4; Haines v. Carpenter, 91 U.S. 254, 257 (1875); Broderick's Will, *supra*, 88 U.S. (21 Wall.) at 517.]

This discretionary refusal to exercise such equity jurisdiction as may exist to do justice "by halves" is made in the light of plaintiff's unquestioned and current right to seek, in the proper probate court of the State of Oregon, all the relief which he seeks here [ORS 115.180, 115.120, 115.130, 3.340]; and the high probability that, if this court were to retain jurisdiction of part of the controversy under the circumstances, plaintiff might indeed confront a situation where the Oregon court itself would refuse to do justice "by halves" [cf Phipps v. Kelly, 12 Ore. 213, 6 Pac. 707, 712 (1885)].

As a distinguished scholar in the field of equity jurisprudence once wisely admonished: "The advantages of vesting a court with both legal and equitable powers are not to be denied. But when the doctrines of equity are no longer administered in a separate court, it is all the more important



not to lose sight of the fundamental distinction between law and equity,—a distinction as eternal as the difference between rights in rem and rights in personam.” [Ames, note, 4 Harv. L. Rev. 394, 395 (1891); see Scott & Simpson, Cases and Other Materials on Civil Procedure, 232-249 (1951).]

Also to be heeded as of course is the admonition of the Court in *Healy v. Ratta*, 292 U.S. 263 (1934): “The power reserved to the states, under the Constitution, to provide for the determination of controversies in their courts may be restricted only by the action of Congress in conformity to the judiciary sections of the Constitution \* \* \* Due regard for the rightful independence of state governments, which should actuate federal courts, requires that they scrupulously confine their own jurisdiction to the precise limits which the statute has defined.” [292 U.S. at 270; *Baltimore Contractors, Inc. v. Bodinger*, 348 U.S. 176, 181 (1955); *Cohens v. Virginia*, 19 U.S. (6 Wheat.) 264, 403 (1821).]

For the reasons stated, the action must be dismissed because the principal controversy, the main cause, is beyond the historic scope of federal equity jurisdiction; for “lack of jurisdiction over the subject matter.” [Fed. R. Civ. P. 12(b)(1); *Matthews v. Rodgers*, supra, 284 U.S. at 524, 529-30; *Twist v. Prairie Oil Co.*, supra, 274 U.S. at 690; *Venner v. Great Northern Ry.*, 209 U.S. 24, 34 (1908); *Blythe v. Hinckley*, 173 U.S. 501, 507 (1899); *Lewis v. Cocks*, supra, 90 U.S. (28 Wall.) 466.]

The judgment dismissing the action shall not

operate "as an adjudication upon the merits" [Fed.-R. Civ.P.41(b)], and the judgment to be entered shall so provide.

The attorneys for defendants may settle and lodge with the Clerk within ten days a judgment of dismissal accordingly, to be settled according to rule.

[Endorsed]: Filed June 28, 1957.

---

[Title of District Court and Cause.]

### ORDER OF DISMISSAL

In this action defendants filed a motion to dismiss upon the ground of lack of jurisdiction. The motion was argued, briefed and considered by the Court, and the Court being fully advised in the premises, it is, therefore,

Ordered, that this action be dismissed without determination by this Court of the merits of any of the matters in controversy, and without costs to or against any of the parties, and it is

Further Ordered, that such dismissal shall be without prejudice to the right of the plaintiff to institute and prosecute, in any court of competent jurisdiction, any action, suit or proceeding to establish and enforce his rights with respect to any of the matters in controversy, and it is

Further Ordered, that plaintiff may amend his complaint if he is so advised within thirty days after the date of this Order, and it is

So Ordered.

Dated this 31st day of December, 1957.

/s/ WM. C. MATHES,  
District Judge.

Acknowledgment of Service Attached.

[Endorsed]: Filed January 7, 1958.

---

[Title of District Court and Cause.]

### FIRST AMENDED COMPLAINT

Plaintiff files this his first amended complaint, as follows:

First Claim for Relief:

#### I.

Plaintiff is a minor of fourteen years of age, and brings this suit through John E. Walker, his Guardian ad Litem.

#### II.

Plaintiff is a resident and citizens of the State of California. Defendant, The United States National Bank of Portland, Oregon, is a national banking association whose principal office and place of business is located in the State of Oregon. Defendants David Lloyd Davies and William W. Knight are residents and citizens of the State of Oregon. The matter in controversy exceeds, exclusive of interest and costs, the sum of Three Thousand Dollars (\$3,000.00).

#### III.

Mrs. Maria C. Jackson (hereinafter referred to

as "Mrs. Jackson") died on February 3, 1956. Plaintiff is, and has been ever since 1953, the sole next of kin and heir at law of Mrs. Jackson.

#### IV.

On or about February 7, 1956, there was admitted to probate in the Circuit Court of Multnomah County, Oregon, a purported last will of Mrs. Jackson and four codicils thereto. This will is dated January 7, 1948, and the codicils are dated February 23, 1950, August 15, 1952, February 27, 1953, and July 8, 1953, respectively. Said will and codicils were admitted to probate in common form, ex parte and without notice to any person whomsoever. Copies of said will and codicils are attached hereto, made a part hereof, and all marked Exhibit A. On information and belief: Said will and codicils were signed and witnessed in the form provided by law. Mrs. Jackson was of sound and disposing mind when she executed said will and codicils. A codicil to said will refers to the last will and testament of Philip Jackson, deceased. A copy of said will is annexed and marked Exhibit B.

#### V.

The value of the estate left by Mrs. Jackson is in excess of Two Million, Four Hundred Thousand Dollars (\$2,400,000.00).

#### VI.

Said will and codicils were admitted to probate on application of defendants David Lloyd Davies

(hereinafter referred to as "defendant Davies") and The United States National Bank, Portland, Oregon (hereinafter referred to as "defendant Bank"). Said defendants are the executors named in said will, and letters testamentary were issued to them by said court on or about February 7, 1956. Defendant Davies, defendant Bank, and defendant William W. Knight (hereinafter referred to as "defendant Knight") are named in said will as trustees of a purported trust created under the terms thereof.

## VII.

The defendant Black White Foundation is sued herein under a fictitious name because its true name is not known to plaintiff, and plaintiff prays that when said true name is ascertained, he be permitted to amend this complaint in order to set forth said name. Upon information and belief: Said Black White Foundation is or will be a corporation. If such corporation has been organized, it is a corporation organized under the laws of the State of Oregon, and it is a resident and citizen of said state. The exact facts concerning said corporation are not known to plaintiff, but are well known to all defendants.

## VIII.

Mrs. Jackson was the widow of Charles Samuel Jackson. Charles Samuel Jackson and Mrs. Jackson had two sons and no other children. These sons were Philip Ludwell Jackson and Francis Clopton Jackson. Philip Ludwell Jackson (hereinafter sometimes referred to as "Philip") had no



issue. Francis Clopton Jackson had a son by the name of Charles Samuel Jackson, Jr. Said Francis Clopton Jackson died in 1919 and, shortly thereafter, at a date unknown to plaintiff, upon information and belief, Mrs. Jackson duly and regularly adopted Charles Samuel Jackson, Jr. as her own son according to the laws of the State of Oregon. Charles Samuel Jackson, Philip Ludwell Jackson, Francis Clopton Jackson, and Charles Samuel Jackson, Jr. predeceased Mrs. Jackson. Charles Samuel Jackson, Jr. left one child, who is the plaintiff herein.

## IX.

Article VI of said purported will of January 7, 1948, republished and amended by the codicils thereto, attempts to create a purported charitable trust. Under the terms of said purported will, republished and amended as aforesaid, the residue and remainder of Mrs. Jackson's estate is left to said purported charitable trust. Said residue and remainder constitutes the major portion of Mrs. Jackson's estate. Said Article VI, republished and amended as aforesaid, is invalid, because the purposes of said purported charitable trust are so indefinite and uncertain that the same cannot be executed and carried out, and because the discretion accorded to the trustees named therein is so wide and indefinite that their consciences cannot be held to the carrying out of a definite and certain purpose under the supervision of a court of equity.



X.

Said Article VI, republished and amended as aforesaid, has not been construed by any court having jurisdiction of the matter or controversy and the parties.

Second Claim for Relief:

I.

Plaintiff repeats and realleges each and every allegation contained in Paragraphs I to VIII and Paragraph X of the First Claim for Relief set forth in this complaint, with the same effect as though repeated at length in this paragraph.

II.

At the time of her death, Mrs. Jackson owned all or the majority of the stock of the Journal Publishing Company, a corporation. The Journal Publishing Company is, and was at all times herein material, the owner and publisher of the "Oregon Journal," a daily newspaper published in Portland, Oregon. Said "Oregon Journal" was founded approximately forty-five years ago, and is, and has been for many years, a great and powerful newspaper.

In the inventory and appraisal of the estate of Mrs. Jackson, filed by the defendant executors in said Circuit Court of Multnomah County, Oregon, said stock of said Journal Publishing Company is given a value in excess of One Million, Five Hundred Thousand Dollars (\$1,500,000.00).

## III.

Article VI of said purported will of January 7, 1948, as republished and amended by the codicils thereto, attempts to create a purported charitable trust. Under the terms of said will, republished and amended as aforesaid, the residue and remainder of Mrs. Jackson's estate is left to said purported charitable trust. The value of said residue and remainder is in excess of Two Million Dollars (\$2,000,000.00), and said residue and remainder includes all of said stock of the Journal Publishing Company, valued as above set forth, in excess of One Million, Five Hundred Thousand Dollars (\$1,500,000.00).

Said Article VI, republished and amended, as aforesaid, is invalid for the following reasons:

(a) Although said Article purports to create a charitable trust, it actually has for its purpose, and achieves only the result of avoiding taxes and of creating a perpetual trust whereby a group of persons, self-perpetuating by appointment, are vested with the title to the controlling stock of the corporation, such stock being of a value, as above set forth, in excess of One Million, Five Hundred Thousand Dollars (\$1,500,000.00). Said corporation owns and publishes, as above set forth, a great and powerful newspaper, but may, pursuant to the trust, be managed and controlled to serve the interests of the self-perpetuating trustees of said stock, with charity as a secondary and subordinate incident. The trustees are given plenary powers, without limitation as to the control, policy and

management of the newspaper; they may keep it or sell it. The trustees holding said newspaper, as well as the balance of Mrs. Jackson's fortune included in the bequest to said trust, with said plenary powers, would be able to place themselves in a position of leadership and social and financial power by virtue of their said control. In addition, the trustees can obtain as compensation for their services as trustees substantial fees.

(b) Said Article VI, as amended by the codicil of July 8, 1953, by its express terms, provides that in disposing of said stock of the Journal Publishing Company, or said newspaper, preference be given as to purchasers thereof to persons in the actual employ of said company, including any person or persons who may be executors of said will or trustees of said trust, even though the amount which may be realized through sales to such limited and definite category or class of persons "may be substantially less than might be obtained if such stock, or the paper owned by said Journal Publishing Company, were to be sold in a different manner or to other purchasers." Under the terms of said Article VI, as amended, therefore, the major portion of the fortune bequeathed to said trust by Mrs. Jackson may, in the untrammelled discretion of the trustees, be used primarily for the financial benefit, gain and business and other advantages of a limited class of persons employed in the business of said Journal Publishing Company, including said executors and trustees, and not for charitable purposes.

Accordingly, the provisions of said trust are

against the public policy of the State of Oregon and create a perpetuity in violation of law.

### Third Claim for Relief:

#### I.

Plaintiff repeats and realleges each and every allegation contained in Paragraphs I to VIII, inclusive, of the First Claim for Relief set forth in this complaint, with the same effect as though repeated at length in this paragraph.

#### II.

The "Oregon Journal," a daily newspaper published in Portland, Oregon, was founded by Mrs. Jackson's husband, Charles Samuel Jackson, approximately forty-five years ago. Charles Samuel Jackson during his lifetime was publisher and directed the policies of said "Oregon Journal." Mrs. Jackson, both during the lifetime of Charles Samuel Jackson and thereafter, took great pride in and had great affection for said newspaper. It was therefore her constant preoccupation and desire to perpetuate and to keep control thereof within the Jackson family. The "Oregon Journal" is, and was at all times material herein, owned and published by the Journal Publishing Company, a corporation.

During his lifetime, Charles Samuel Jackson owned all, or the great majority, of the stock of the Journal Publishing Company, which, on his death, went to his widow, Mrs. Jackson. She retained this stock until her death.

### III.

Defendant Davies is a practicing attorney who was admitted to the bar of the State of Oregon in 1927. Defendant Davies was, at the time of Mrs. Jackson's death and for many years prior thereto, her personal attorney as well as an attorney for said Journal Publishing Company and the Oregon Journal. As said attorney, defendant Davies had full information and knowledge respecting the nature and value of her properties, including her stock in said Journal Publishing Company. As said attorney, defendant Davies also knew of Mrs. Jackson's desires with respect to said "Oregon Journal." Upon information and belief, defendant Davies was also for many years, and until Philip's death, Philip's personal attorney.

### IV.

On information and belief: Mrs. Jackson reposed great trust and confidence in defendant Davies and had a very high regard for his legal and business ability, and she, therefore, sought and followed his counsel in connection with important family and business matters. Mrs. Jackson also reposed great trust and confidence in Philip and also had a high regard for his business ability, and she, therefore, sought and followed his counsel in connection with all said family and business matters.

### V.

On information and belief: In making said will dated January 7, 1948, mentioned in Paragraph IV



hereof, Mrs. Jackson sought and obtained the advice of Philip and defendant Davies. Defendant Davies is the person who drafted this will and its four codicils.

At the time that this will was under discussion, Philip and plaintiff were the only surviving lineal descendants of Mrs. Jackson. Philip was then publisher of the "Oregon Journal." He was in excess of fifty years of age, his exact age being unknown to plaintiff. He had never had any children. Accordingly, Mrs. Jackson desired, by means of her will, to provide generously for plaintiff and to give him the right and opportunity to come into control of said newspaper as owner, publisher and editor. Philip and defendant Davies were told by Mrs. Jackson of her desires with respect to plaintiff and were asked for their counsel and advice with regard thereto.

## VI.

On information and belief: At or about the time that Mrs. Jackson sought their advice, as set forth in Paragraph V hereof, defendant Davies and Philip determined Mrs. Jackson would make a will under the terms of which plaintiff would receive nothing, and whereby they would obtain control of her assets, including her stockholdings in the Journal Publishing Company. Pursuant to said determination, Philip and defendant Davies represented to Mrs. Jackson that any disposition of her estate as she desired would result in an assessment of Federal estate taxes which could not be met without selling her shares in the Journal Publishing



Company to outsiders who would then gain control of the "Oregon Journal." Philip and defendant Davies also represented to her that in order to preserve the "Oregon Journal," it would be necessary to avoid large estate taxes, and that this could be accomplished only by placing substantially all of her estate in a tax-free foundation. These representations were and are untrue and known by defendant Davies to be untrue at the time they were made. These representations were either known to be untrue by Philip at said time, or were made negligently and without a reasonable effort to ascertain whether they were true or false.

These representations were and are untrue because said estate has, and had at all times herein material, sufficient assets to pay the Federal estate taxes which would have been assessed, had Mrs. Jackson made a will in accordance with her desires, without having to sell any of her said stockholdings in the Journal Publishing Company. These representations also were and are untrue because the "Oregon Journal" could have been maintained and perpetuated as desired by Mrs. Jackson by leaving her shares in the Journal Publishing Company, and no other property, to a tax-free beneficiary. Mrs. Jackson, because of the great trust and confidence which she reposed in Philip and defendant Davies, believed said representations and relied thereon at all times herein material.

Philip and defendant Davies, and each of them, pursuant to said determination and by means of said representations, induced Mrs. Jackson to in-

clude Article VI in her will giving the entire income of the estate to Philip for life and the remainder to a foundation, which they told Mrs. Jackson would receive the remainder of her estate, free of estate taxes, and in which no provision would be made for plaintiff. In order to accomplish the said purpose, Philip and defendant Davies utilized the trust and confidence which she reposed in them and her fear, well known to them, that the "Oregon Journal" would fall into the hands of strangers, and out of the hands of the Jackson family. By so doing, they were able to and did overcome her volition to the extent that, although she desired to provide for plaintiff as aforesaid, she, nevertheless, executed a will which reflected the purposes and desires of Philip and defendant Davies and not her own.

Philip had no desire to provide for anyone else out of his mother's estate. He had neither affection nor regard for plaintiff. By leaving the remainder interest to a supposedly tax-free foundation, and thereby attempting to free the value of said remainder from taxes, Philip expected to and planned to receive the largest possible income for life by minimizing the Federal estate taxes on his mother's estate, thereby preserving the maximum value for the corpus of the estate.

Having set the method of devolving the property of his mother, Philip acted in concert with defendant Davies by means unknown to plaintiff, but well known to defendant Davies, so that defendant Davies prepared a will to accomplish the purposes aforesaid and hereinafter alleged. In said will there

was included a clause whereby Mrs. Jackson disinherited her great-grandson by blood and her adopted grandson (then approximately five years of age) in the manner set forth in Article VIII of said will of January 7, 1948.

The foundation was so planned that after the death of Philip, defendant Davies, defendant Bank and a person selected by defendant Davies would, as trustees, control the foundation, the "Oregon Journal," and the Journal Publishing Company. Defendant Davies was then, ever since has been, and now is an attorney for defendant Bank. The Jackson fortune and the prestige of a great newspaper were at all material times, and are now sources of power, influence, and prestige. The trustees holding said fortune and newspaper with plenary powers, and without substantial supervision or interference would be able to place themselves in a position of leadership and social and financial power by virtue of their said control. In addition, the position of trustee would be lucrative, yielding substantial fees for life. In addition, defendant Davies would, either directly or through others, act as legal counsel for the foundation, with additional substantial emoluments.

## VII.

In February 1950, and August 1952, Mrs. Jackson added codicils to her will, the subject of which was a gift to Stanford University. In the codicils, she ratified and confirmed all the provisions of said will dated January 7, 1948.

On February 27, 1953, after the death of Philip,

Mrs. Jackson added a further codicil to her will. Under the terms thereof she created a trust of One Hundred Fifty Thousand Dollars (\$150,000.00) for the benefit of plaintiff. The residue, comprising substantially all her estate, was left as in the will of January 7, 1948, to said foundation, of which the defendant Davies was to be one of the trustees. In this codicil, defendant Davies is named co-executor of said will. By means of this instrument, Mrs. Jackson again ratified and confirmed the provisions of said will of January 7, 1948.

On July 8, 1953, Mrs. Jackson executed another codicil to her said will. This codicil contains a provision whereby defendant Davies would be one of a class of persons who, under a certain set of circumstances would be able to buy the stock of said Journal Publishing Company at prices substantially lower than might be obtained if such stock were sold to persons not included in said class. In this codicil, Mrs. Jackson again ratified and confirmed the provisions of her said will of January 7, 1948.

On information and belief: Said codicils to said will were signed and witnessed in the form provided by law, and Mrs. Jackson was of sound and disposing mind and memory when she executed said codicils.

## VIII.

At no time was there ever a disclosure to Mrs. Jackson by any person whomsoever, as to the fact that the representations hereinabove set forth were untrue, although it was the duty of defendant Davies and also of Philip, if he had knowledge of



such untruths, to so do. By this concealment, defendant Davies was able, after the death of Philip, to induce Mrs. Jackson, contrary to her natural inclinations, so to amend said will of January 7, 1948, by means of said codicils of February 27, 1953, and July 8, 1953, as to preserve and greatly enhance the privileges and emoluments which were provided for him in said will to the extent stated above. By this concealment, defendant Davies was also able to prevent Mrs. Jackson from making a will under the terms of which plaintiff would have gained control of the "Oregon Journal," and a substantial portion of the balance of her estate. All of the representations and influences which motivated, induced, and caused the execution of the will of January 7, 1948, likewise induced, motivated and caused the republication of said will in said four codicils, in that nothing occurred in any manner to make Mrs. Jackson suspect or question the representations made to her; and defendant Davies continued to be her trusted and confidential attorney.

## IX.

On information and belief: At some time subsequent to 1953, unknown to plaintiff, Mrs. Jackson determined to make certain that her wishes as to plaintiff would be carried out; i.e., that he would come into control of the "Oregon Journal" and would also ultimately receive the bulk of her estate. She accomplished this by a new will or codicil, a change in trust provisions, directions to trustees, or by some other means, all unknown to plaintiff. She

made known to certain of her friends that she had completed such arrangements for plaintiff, but did not disclose the method whereby her purpose and desire had been accomplished. By such method the wills and codicils above mentioned have been amended or revoked in such manner that plaintiff will receive far in excess of One Hundred Fifty Thousand Dollars (\$150,000.00) provided for him in the codicil of February 27, 1953. Such method is known to defendants and was known to defendant Davies when he applied for the admission to probate of said will and codicils. Plaintiff has no knowledge or information on the subject of the method used by Mrs. Jackson to accomplish her said purposes.

## X.

By reason of the foregoing, any money and property of any kind which said defendant trustees may receive pursuant to Article VI as republished and amended are impressed with a trust in favor of plaintiff and said defendant trustees should be ordered and directed to administer said trust in such manner as this Court shall by its judgment herein determine to be just and equitable after distribution by said Oregon Circuit Court.

### Fourth Claim for Relief:

#### I.

Plaintiff repeats and realleges each and every allegation contained in Paragraphs I to VIII of the First Claim for Relief set forth in this complaint, with the same effect as though repeated at length in this paragraph.



II.

Plaintiff repeats and realleges each and every allegation contained in Paragraphs II to VIII of the Third Claim for Relief set forth in this complaint, with the same effect as though repeated at length in this paragraph.

III.

On information and belief: When Mrs. Jackson executed the various codicils and parts thereof to the extent that they republished and amended Article VI of her will, she was motivated and induced by the same fraud which motivated and induced her to include Article VI in her will.

IV.

By reason of the facts alleged above, said Article VI and said codicils in so far as they republished and amended Article VI are void and invalid because they are the result of said fraud. All other parts of said will are valid.

Fifth Claim for Relief:

I.

Plaintiff repeats and realleges each and every allegation contained in Paragraphs I to VIII of the First Claim for Relief set forth in this complaint, with the same effect as though repeated at length in this paragraph.

II.

Plaintiff repeats and realleges each and every allegation contained in Paragraphs II to VIII of

the Third Claim for Relief set forth in this complaint, with the same effect as though repeated at length in this paragraph.

### III.

On information and belief: By reason of the relationship between Mrs. Jackson and her son Philip and the relationship between her and her attorney Davies, she was unduly influenced to include Article VI in her will and unduly influenced to execute the various codicils and parts thereof to the extent that the same republished and amended said Article VI. By reason of such undue influence she was unable to exercise her own free will, judgment and volition and was unable to provide properly for her only descendant, plaintiff herein, although she desired to do so and the will and desires of Philip and defendant Davies, during Philip's lifetime, and the will and desires of defendant Davies after Philip's death were substituted for the will and desires of Mrs. Jackson.

### IV.

By reason of the facts alleged above, said Article VI and said codicils in so far as they republished and amended Article VI are void and invalid, because they are the result of said undue influence. All other parts of said will are valid.

Sixth Claim for Relief:

### I.

Plaintiff repeats and realleges each and every allegation contained in Paragraphs I to X of the

First Claim for Relief set forth in this complaint, with the same effect as though repeated at length in this paragraph.

II.

Plaintiff repeats and realleges each and every allegation contained in Paragraphs II and III of the Second Claim for Relief set forth in this complaint, with the same effect as though repeated at length in this paragraph.

III.

Plaintiff repeats and realleges each and every allegation contained in Paragraphs II to VIII of the third claim for relief set forth in this complaint, with the same effect as though repeated at length in this paragraph.

IV.

Plaintiff repeats and realleges each and every allegation contained in Paragraphs III and IV of the Fourth Claim for Relief set forth in this complaint, with the same effect as though repeated at length in this paragraph.

V.

Plaintiff repeats and realleges each and every allegation contained in Paragraphs III and IV of the Fifth Claim for Relief set forth in this complaint, with the same effect as though repeated at length in this paragraph.

VI.

As to the property included in said Article VI as

republished and amended by said codicils, Mrs. Jackson died intestate. Appropriate proceedings should be initiated and conducted by defendants in accordance with the principles of equity to cause distribution of said property by said Oregon Circuit Court to be made to plaintiff as Mrs. Jackson's sole heir at law and next of kin.

Wherefore, plaintiff prays judgment as follows:

1. As to the First Claim for Relief, that Article VI of said purported will and said codicils thereto, as republished and amended by the codicils thereto, are null and void.

2. As to the Second Claim for Relief, that Article VI as republished and amended, as aforesaid, is null and void.

3. As to the Third Claim for Relief, that any property which said defendant trustees may receive pursuant to Article VI as republished and amended are impressed with the trust in favor of plaintiff and said defendant trustees be ordered and directed to administer said trust in such manner as this Court shall by its judgment herein determine to be just and equitable.

4. As to the Fourth and Fifth Claims for Relief, that said Article VI, as so republished and amended, is null and void.

5. As to the Sixth Claim for Relief, that Mrs. Jackson died intestate and that appropriate proceedings be ordered to be conducted by defendants

in accordance with the principles of equity to cause distribution by said Oregon Circuit Court of the property described in Article VI to be made to plaintiff as Mrs. Jackson's sole heir at law and next of kin.

6. For such other and further relief as to the Court may seem meet and proper.

7. For plaintiff's costs herein.

Dated December 31, 1957.

/s/ GLENN R. JACK,  
/s/ JOHN E. WALKER,

LIVINGSTON & BORREGARD,  
/s/ By LAWRENCE LIVINGSTON,  
/s/ LAWRENCE LIVINGSTON,  
/s/ RICARDO J. HECHT,  
Attorneys for Plaintiff.

## EXHIBIT "A"

### LAST WILL AND TESTAMENT OF

MARIA C. JACKSON

I, Maria C. Jackson, of Portland, Oregon, do hereby make, publish and declare this my last will and testament, hereby revoking all former wills and codicils made by me.

#### Article I.

I direct the payment by my executor out of my estate of all of my just debts allowed in the course

## Exhibit "A"—(Continued)

of administration, the expenses of last illness and funeral, the expenses of administration of my estate, and all inheritance, estate and legacy taxes, to the end that the specific and general bequests contained herein shall be paid and distributed without deduction for any of the disbursements made under the provisions of this article.

## Article II.

I give and bequeath to my son, Philip Ludwell Jackson, all household goods, books, apparel, jewelry, and all other like contents of my place of abode, and any automobiles which I may own at the time of my death.

(Handwritten: Revoked 3-C, 2/27/53.)

## Article III.

I give and bequeath to each person who shall be in my personal employ at the time of my death an amount equal to one hundred dollars (\$100) for each year or fraction thereof he or she shall have been in my employ.

(Handwritten: OK, not changed.)

## Article IV.

I give and bequeath to Emma Jackson, of Delta-ville, Virginia, an amount determined at the rate of one hundred dollars (\$100) per month for a period beginning with the date of my death and continuing as long as she shall live; and I direct my executor to pay this bequest in monthly installments of one



Exhibit "A"—(Continued)

hundred dollars (\$100) per month beginning at a date as near as possible to the date of my death. If Emma Jackson shall not be living at the date of my death, the legacy in this article shall lapse.

(Handwritten: No change.)

I direct my executor to make provision, before distribution of the residue of my estate, for the continuance of the monthly payments to the legatee named in this article, either by purchase of annuities or by placing adequate sums in trust with a responsible corporate trustee, with directions to pay the income or principal to said legatee and upon the death of said legatee to pay the remainder, including principal and all accumulated, accrued, and undistributed income to the residuary legatees under Article V of this will, or by other appropriate plan which my executor shall deem suitable or adequate for the continuance of said monthly payment to said legatee as long as she shall live.

Article V.

All the rest, residue and remainder of my estate, of whatever nature and wherever situated, I give, devise and bequeath to my son, Philip Ludwell Jackson, and The United States National Bank of Portland (Oregon), not for their own use and benefit but in trust for the following uses and purposes:

(Handwritten: Not changed or Revoked.)

1. The net income from the trust estate shall be distributed to my son, Philip Ludwell Jackson, for his lifetime.

## Exhibit "A"—(Continued)

2. Upon the death of my son this trust shall terminate and all of the principal thereof and all accrued, accumulated, and undistributed income shall be paid over and distributed, discharged from this trust, to the trustees of The Jackson Foundation, provided for in Article VI hereof, to be administered and distributed by said trustees of said Foundation for the uses and purposes specified in Article VI.

3. While the trust created by this article is in existence my son, Philip Ludwell Jackson, shall have the right to exercise in the manner determined by him to be proper all voting rights attributable to any stock or securities from time to time constituting a part of the principal of the trust estate, and the trustees, upon the request of my son, Philip Ludwell Jackson, shall execute and deliver to him such proxies or other necessary instruments to enable him to exercise such voting rights. The trustee other than my son, Philip Ludwell Jackson, shall be in no way responsible for the manner in which any such voting rights are exercised by my son, Philip Ludwell Jackson.

4. The trustees shall invest and reinvest all principal cash in the trust fund in any form of property which the trustees shall deem to be for the best interests of the trust, and in exercising such powers of investment the trustees shall not be restricted or limited by any statute or law relating to the character of investments which may be made by a fiduciary.

Exhibit "A"—(Continued)

5. The trustees shall hold and manage the property as a trust fund, with power to sell, exchange, mortgage, or otherwise dispose of any of the property as they may deem proper. The trustees shall have the right to exchange any securities in this trust for any other securities that may be offered in any reorganization, refinancing, merger, consolidation, or dissolution or any change of corporate capital structure if in the judgment of the trustees such exchange is advisable. Without in any way limiting the broad powers herein granted to the trustees to sell and dispose of assets of the trust, I express the wish, which shall not be construed to be mandatory or binding upon the trustees, that if any stock of Journal Publishing Company, an Oregon corporation, shall be included in the assets of the trust, the trustees shall not sell or dispose of any such stock except in a manner consistent with the provisions contained in Article VI hereof relating to disposition of stock of Journal Publishing Company by the trustees of the Foundation created by Article VI.

6. If during the lifetime of my son, Philip Ludwell Jackson, he shall for any reason cease to be a trustee, it shall not be necessary to appoint a successor to him as trustee but thereafter the trust created by this article shall be administered by said The United States National Bank of Portland (Oregon) as sole trustee.

Article VI.

Upon the death of my son, Philip Ludwell Jack-

## Exhibit "A"—(Continued)

son, there shall forthwith be created a trust which shall be known as The Jackson Foundation, to be administered in accordance with the following provisions of this article:

1. The trustees of said Foundation shall be The United States National Bank of Portland (Oregon), David L. Davies, of Portland, Oregon, and a third individual who shall be appointed by David L. Davies and the person who at that time is the president of said The United States National Bank of Portland (Oregon). Thereafter in the event of a vacancy for any reason of trustees who shall be natural persons, the successor trustee shall be appointed by the remaining individual trustee and the individual who at that time is the president of The United States National Bank of Portland (Oregon).

[Handwritten: Amended & Supplemented.]

2. The net income from the trust shall be distributed by the trustees for use within the State of Oregon for charitable, educational or eleemosynary purposes and for the advancement of public welfare. The trustees shall have wide discretion in the selection of the particular purposes for which said distribution shall be made and shall select beneficiaries as they shall deem to be most appropriate and best calculated to promote the welfare of the public of the City of Portland or the State of Oregon, or both.

3. If any stock of Journal Publishing Company, an Oregon corporation, shall at any time constitute a part of the principal of the trust fund, the trus-



Exhibit "A"—(Continued)

tees shall, in any disposition of such stock, endeavor to do so in a manner such as to perpetuate the Oregon Journal, the newspaper published by Journal Publishing Company, as a newspaper which conforms generally to the standards of that newspaper since the founding thereof by my late husband, Charles Samuel Jackson. If it may be done without jeopardy to the standing of said newspaper, the trustees shall endeavor to favor and give preference to persons actually in the employ of Journal Publishing Company and engaged in the publication and operation of the newspaper. I appreciate that at this time I cannot adequately define the processes which shall be adopted by the trustees in carrying out the policies of administration expressed in this paragraph and for that reason I give to the trustees broad powers, to be exercised in their discretion, in accomplishing the purposes and policies expressed in this paragraph.

4. The trustees shall invest and reinvest all principal cash in the trust fund in any form of property which the trustee shall deem to be for the best interests of the trust, and in exercising such powers of investment the trustees shall not be restricted or limited by any statute or law relating to the character of investments which may be made by a fiduciary.

5. The trustees shall hold and manage the property as a trust fund, with power to sell, exchange, mortgage, or otherwise dispose of any of the property as they may deem proper. The trustees shall

## Exhibit "A"—(Continued)

have the right to exchange any securities in this trust for any other securities that may be offered in any reorganization, refinancing, merger, consolidation or dissolution or any change of corporate capital structure if in the judgment of the trustees such exchange is advisable.

6. The trustees may accept contributions to the principal of this trust from any source by gift, devise, legacy, or in any other form. Property so received by the trustees shall be held and administered as a part of the principal of this trust in the manner hereinbefore set forth in this article.

7. The duration of this trust shall be perpetual.

## Article VII.

If it is necessary for my executor to sell or liquidate any of the assets of my estate for the purpose of obtaining money to pay debts, expenses of administration, taxes, the legacies provided in Articles III and IV, or other charges against my estate, I direct that such sale shall be made in the order and by classes as follows:

1. All assets other than those described in the following 2, 3, 4 and 5;

2. My stock of Journal Building Company;

3. My preferred stock of Journal Publishing Company;

4. My common stock of Journal Publishing Company;

5. My personal property bequeathed by Article II;



Exhibit "A"—(Continued)

and that, if possible, the property in each class shall be completely liquidated before the sale of any of the property in the next higher numbered class.

[Handwritten: No change.]

Article VIII.

I have refrained in this will from making any provision for my great-grandson, Peter Crockett Jackson, because I know that he has been amply provided for in other ways.

[Handwritten: Revoked.]

Article IX.

I nominate and appoint my son, Philip Ludwell Jackson, as executor of this, my last will and testament, and I direct that he shall be permitted to serve in that capacity without bond or other undertaking. If my son shall for any reason be unwilling or unable to act as executor, I nominate as executor The United States National Bank of Portland (Oregon). My executor shall have full power to sell, convey, lease, pledge, mortgage, or otherwise dispose of any and all real or personal property that I may own at the time of my death or which may be acquired by my estate, and in exercising the powers hereby granted my executor shall not be required to comply in any way with any statute or law relating to the sale or disposition of property by the personal representative of an estate, and in particular shall not be required to obtain from any court any order authorizing or confirming any such sale or other disposition.

## Exhibit "A"—(Continued)

In Witness Whereof, I have hereunto set my hand to this, my last will and testament, this 7th day of January, 1948.

MARIA C. JACKSON.

This instrument, consisting of eight (8) typewritten pages, each bearing the signature of the above named Maria C. Jackson, was by her on the date hereof signed, published and declared by her to be her last will and testament in our presence, who, at her request and in her presence and in the presence of each other, we believing her to be of sound and disposing mind and memory, have hereunto subscribed our names as witnesses.

CHARLES A. HART,

Residing at Portland, Oregon.

FLETCHER ROCKWOOD,

Residing at Portland, Oregon.

PAUL L. BOLEY,

Residing at Portland, Oregon.

Codicil to Last Will and Testament of Maria C. Jackson.

I, Maria C. Jackson, of Portland, Oregon, do hereby make, publish and declare this codicil to my last will and testament dated January 7, 1948.

Article I.

Article VI of my said last will and testament

Exhibit "A"—(Continued)

dated January 7, 1948, is hereby amended by adding a paragraph (8) thereto to read as follows:

"8. Notwithstanding the provisions hereinbefore in this article contained, it is my wish and I direct that the trustees of The Jackson Foundation shall, as soon as in their judgment such action is desirable following the establishment of The Jackson Foundation, pay to the trustees of the Leland Stanford Junior University the sum of \$45,000.00 which sum may, in the discretion of the board of trustees of the University, be merged and mingled with and become a part of the general investment assets of said University. It shall be known as the Charles Samuel Jackson, Jr. Fellowship Fund, and the income but not the principal thereof shall be used to establish a fellowship for a worthy graduate student in the Institute for Journalistic Studies of said University. The amount of such fellowship shall be determined by the president or such other authority as may be designated by the said board of trustees of said University for said purpose, and the beneficiaries thereof shall be designated by the faculty of the said Institute for Journalistic Studies or by the faculty of whatever department of said University should succeed to the functions of said Institute for Journalistic Studies in the future.

"Until such time as in the judgment of the trustees of The Jackson Foundation, the payment of said sum is feasible, it is my wish and I direct that in each year before the first of August, the trustees of The Jackson Foundation shall pay to the trus-

## Exhibit "A"—(Continued)

tees of said University the sum of \$1800.00 to be used by said trustees in the same manner as the income from said larger sum will be used after it is so paid. The payment of such yearly amounts shall be in addition to the payment of the principal sum."

## Article II.

In all other respects I do ratify and confirm my said last will and testament.

In Witness Whereof, I have hereunto set my hand to this my last will and testament this 23rd day of February, 1950.

[Seal]

MARIA C. JACKSON.

This instrument, consisting of three pages including the following page, each bearing the signature of the above-named Maria C. Jackson, was by her on the date hereof declared to be the codicil to her last will and testament dated January 7, 1948, in our presence, who at her request and in her presence and in the presence of each other, we believing her to be of sound and disposing mind and memory, have hereunto subscribed our names as witnesses.

CHARLES A. HART,

Residing at Portland, Oregon.

FLETCHER ROCKWOOD,

Residing at Portland, Oregon.

THOMAS B. STOEL,

Residing at Portland, Oregon.

Exhibit "A"—(Continued)

Second Codicil to Last Will and Testament of Maria C. Jackson.

I, Maria C. Jackson, of Portland, Oregon, do hereby make, publish and declare this codicil to my last will and testament dated January 7, 1948, and to the codicil thereof bearing date February 23, 1950.

Article I.

I hereby revoke the provisions of Article I of my said codicil dated February 23, 1950, for the reason that I have heretofore paid to the trustees of the Leland Stanford Junior University the sum of \$45,000 for which provision was made in Article I of said codicil.

Article II.

I do hereby ratify and confirm all of the provisions of my said last will and testament dated January 7, 1948.

In Witness Whereof, I have hereunto set my hand to this second codicil to my last will and testament this 15th day of August, 1952.

[Seal]                      MARIA C. JACKSON.

This Is To Certify that on this 15th day of August, 1952, the above-named testatrix, Maria C. Jackson, being then of sound and disposing mind and not acting under any duress or undue influence made and published the foregoing instrument, consisting of two pages, bearing her signature, as and for a second codicil to her last will and testament, and signed the same in the presence of us and each of us, and at the same time and place, at the re-



## Exhibit "A"—(Continued)

quest of the said testatrix, and in her presence and in the presence of each other, we have signed and attested the same as witnesses thereof.

FLETCHER ROCKWOOD,

Residing at Portland, Oregon.

PAUL L. BOLEY,

Residing at Portland, Oregon.

THOMAS B. STOEL,

Residing at Portland, Oregon.

Maria C. Jackson

Third Codicil to Last Will and Testament of Maria C. Jackson.

I, Maria C. Jackson, of Portland, Oregon, do hereby make, publish and declare this codicil to my last will and testament dated January 7, 1948, and to the codicils thereof bearing dates February 23, 1950 and August 15, 1952.

Article I.

I hereby revoke Article II of my said last will and testament dated January 7, 1948, and substitute in lieu thereof a new Article II to read as follows:

"Article II.

"I give and bequeath all household goods, books, apparel, jewelry and all other like contents of my place of abode, but not including any cash or securities, to my good friend Kathryne Kelly.

Exhibit "A"—(Continued)

"I give and bequeath to my faithful chauffeur Eugene L. Carden one of the automobiles which I may own at the time of my death and if I shall own but one such automobile then I give and bequeath to said Eugene L. Carden the said automobile. If I shall own more than one automobile at the time of my death, Eugene L. Carden shall have the choice of which of said automobiles he desires to accept under this Article and shall notify my executors of his choice within three months after my death. In the event that he shall fail to so notify my executors, the executors shall choose which of the automobiles he shall receive hereunder."

Article II.

I hereby add a new Article to my said last will and testament dated January 7, 1948, to be known as Article II-A and to read as follows:

"Article II-A

"I give and bequeath to The United States National Bank of Portland (Oregon) the sum of \$150,000.00, not for its own use and benefit, but in trust for the following uses and purposes:

"1. The net income therefrom shall be paid in quarterly or other convenient installments to or for the benefit of my great-grandson Peter Crockett Jackson until he shall attain the age of 35 years, and at that time all of the trust property, including principal and all accrued, accumulated and undistributed income shall be distributed, discharged from

## Exhibit "A"—(Continued)

this trust to my great-grandson Peter Crockett Jackson and this trust shall terminate.

"2. While my great-grandson herein named is a minor, the trustee shall distribute to or for the use of my said great-grandson only so much of the income as it shall determine to be necessary for the maintenance, comfort, general welfare and education of my great-grandson, and the remainder of the income not so distributed shall be added to and become a part of the principal of the trust. While my said great-grandson is a minor, distributions of income for his benefit may, at the discretion of the trustee, be made directly to my great-grandson, or to his legal guardian, or to any person or corporation who shall furnish maintenance, support or education to my great-grandson, and the receipt of any person or corporation to whom distributions for the benefit of my great-grandson are made under the provisions of this paragraph shall be a sufficient voucher in the hands of the trustee.

"3. If my great-grandson does not survive to attain the age of 35 years, distributions of principal and income shall be made by the trustee to the surviving lineal descendants of my said great-grandson by right of representation on the same date or dates that my great-grandson would have received such distributions of income or principal had he lived.

"4. If my great-grandson shall not survive to attain the age of 35 years and shall leave no surviving lineal descendants at the time of his death, this trust shall terminate at the time of the death

Exhibit "A"—(Continued)

of my said great-grandson and all of the trust property, including principal and all accrued, accumulated and undistributed income shall be paid over to the trustees of the trust created by Article VI of my last will and testament dated January 7, 1948, to be held and administered as part of the principal of the said trust. If under any circumstances there is any portion of the trust fund, either principal or income, for which there is no named or described beneficiary, such portion of the trust fund shall likewise be paid over to the trustees named in the said Article VI of my last will and testament.

"5. The trustee shall hold and manage the property as a trust fund, with power to sell, exchange, mortgage, or otherwise dispose of any of the property as it may deem proper. The trustee may hold any property of the trust estate in its own name, or in the name of its nominee or nominees, with or without disclosure of fiduciary relationship. The trustee, in making distribution of principal hereunder, may do so in money, securities or other property at the market value at the date of distribution as nearly as can be determined by the trustee, and the judgment of the trustee as to what shall constitute a just and proper division or apportionment among beneficiaries shall be binding and conclusive on all parties.

"6. The trustee shall invest and reinvest the principal of the trust fund in any form of property, real or personal, which the trustee shall deem to be

## Exhibit "A"—(Continued)

for the best interests of the trust estate, and the trustee is specifically relieved of compliance with any statute relating to the character of investments which may be made by a fiduciary.

"7. No title in this trust estate nor in the income therefrom shall vest in any beneficiary, and neither the income nor principal of the trust shall be liable for the debts, including alimony, of any beneficiary, and no beneficiary shall have any power to sell, assign, transfer, encumber, or in any manner to anticipate or dispose of his or her interest in the trust or the income produced thereby prior to the actual distribution thereof by the trustee to or for the use of said beneficiary in the manner herein provided."

## Article III.

I hereby revoke Article VIII of my last will and testament of January 7, 1948.

## Article IV.

I hereby supplement and amend Article VI of my last will and testament dated January 7, 1948, and direct that the third individual referred to therein who is to serve as a trustee of the trust created in that Article at the commencement of the said trust shall be William W. Knight. I hereby adopt as a part of said will the provisions of Paragraph 4 of Article VII of the last will and testament of my son, Philip Ludwell Jackson, admitted to probate in Multnomah County, Oregon, on February 24, 1953, as the provisions relating to suc-



Exhibit "A"—(Continued)

cessor trustees of the trust created by Article VI of my said will.

Article V.

I hereby revoke Article IX of my said last will and testament dated January 7, 1948, and substitute in lieu thereof a new Article IX to read as follows:

"Article IX.

"I nominate and appoint David L. Davies and The United States National Bank of Portland (Oregon) as executors of my last will and testament, and I direct that David L. Davies shall be permitted to serve in that capacity without bond or other undertaking. My executors shall have full power to sell, convey, lease, pledge, mortgage or otherwise dispose of any and all real or personal property that I may own at the time of my death or which may be acquired by my estate, and in exercising the powers hereby granted my executors shall not be required to comply in any way with any statute or law relating to the sale or other disposition of property by the personal representative of an estate, and in particular they shall not be required to obtain from any court any order authorizing or confirming any such sale or other disposition. My executors in making distribution of my estate, may do so in money, securities or other property at the market value at the time of distribution as nearly as can be determined by the executors, and the judgment of the executors as to what

## Exhibit "A"—(Continued)

shall constitute market value for such purpose shall be binding and conclusive on all parties;

Provided, however that it is my wish that my executors shall not distribute in satisfaction of the bequest contained in Article II of the third codicil to my last will and testament any stock of Journal Publishing Company. Any reference in my last will and testament or the codicils thereto to my executor shall be deemed to include the plural."

## Article VI.

Except as modified and supplemented by this codicil, I do hereby ratify and confirm all of the provisions of my said last will and testament dated January 7, 1948, and the codicil to my said last will and testament bearing date February 23, 1950.

In Witness Whereof, I have hereunto set my hand to this my third codicil to my last will and testament this 27th day of February, 1953.

MARIA C. JACKSON.

This Is To Certify that on this 27th day of February, 1953, the above-named testatrix, Maria C. Jackson, being then of sound and disposing mind and not acting under any duress or undue influence made and published the foregoing instrument, consisting of seven pages, bearing her signature, as and for a third codicil to her last will and testament, and signed the same in the presence of us and each of us, and at the same time and place, at

Exhibit "A"—(Continued)

the request of the said testatrix, and in her presence and in the presence of each other, we have signed and attested the same as witnesses thereof.

CHARLES A. HART,  
Residing at Portland, Oregon.

FLETCHER ROCKWOOD,  
Residing at Portland, Oregon.

PAUL L. BOLEY,  
Residing at Portland, Oregon.

Fourth Codicil to Last Will and Testament of  
Maria C. Jackson.

I, Maria C. Jackson, of Portland, Oregon, do hereby make, publish and declare this codicil to my last will and testament dated January 7, 1948, and to the codicils thereof bearing dates of February 23, 1950, August 15, 1952, and February 27, 1953.

Article I.

I hereby add a new article to my said last will and testament and the codicils thereof to read as follows:

"Article II-B.

"In the event that Eugene L. Carden who has been my faithful chauffeur, shall be indebted to me in any amount at the time of my death, then and in that event I direct that the indebtedness of the said Eugene L. Carden, including both principal and any interest owing at the date of my death, shall

**Exhibit "A"—(Continued)**

be cancelled by my executors and that the cancelled evidence of such indebtedness shall be delivered to the said Eugene L. Carden."

**Article II.**

I hereby supplement and amend Article VI of my last will and testament dated January 7, 1948, as supplemented and amended by Article IV of the third codicil to my last will and testament dated February 27, 1953, and specifically direct that my trustees shall be under no obligation to change the investments which come into their hands from my estate on account of the character or amount thereof but shall do so only when they deem it advisable so to do and after careful investigation and consideration. In particular, my trustees are authorized to retain as assets of the trust any shares of stock of Journal Publishing Company which come into their hands, even though such shares of stock shall constitute a substantial portion of the trust fund. Furthermore, I specifically direct that when and if my executors or trustees, or my executors and trustees, as the case may be, shall in their sole discretion deem it to the best interests of The Oregon Journal as a continuing local newspaper of the character described in paragraph 3 of Article VI of my said last will and testament or to the best interests of the trust estate to make such sale of any stock of Journal Publishing Company they shall exercise their discretion to make such sale in such manner that, if possible,

Exhibit "A"—(Continued)

the ownership and control of Journal Publishing Company and the newspaper which it operates shall be retained on a local basis, preferably in the hands of persons who are then in the actual employ of Journal Publishing Company or who are associated with the management and operation of the paper; and I direct that in any disposition of such stock the purpose herein stated shall be carried out even though the amount which may be realized through such sales may be very substantially less than might be obtained if such stock or the paper owned by said Journal Publishing Company were to be sold in a different manner or to other purchasers. Furthermore, I direct that any person or persons within the categories above specified who may also be at any given time an executor of my will, or trustee of any of the trusts created by my will (and the codicils thereof), shall be permitted and eligible to purchase stock at the same prices and on the same terms as my executors or trustees are willing to sell to others within such preferred categories of purchasers, even though such person or persons may be then acting as such executor or trustee.

Article III.

Except as modified and supplemented by this codicil, I do hereby ratify and confirm all of the provisions of my said last will and testament dated January 7, 1948, and the codicils to my said last will and testament bearing dates of August 15,



## Exhibit "A"—(Continued)

1952, and February 27, 1953. The only new provisions contained in my codicil dated February 23, 1950, were revoked by my codicil dated August 15, 1952. In my codicil dated February 27, 1953, it was my intention to ratify the codicil dated August 15, 1952, but through inadvertence I erroneously ratified and confirmed the provisions of the codicil bearing date of February 23, 1950. I do not ratify and confirm my codicil dated February 23, 1950, but as stated above I do hereby confirm the revocation thereof contained in my said codicil bearing date of August 15, 1952.

In Witness Whereof, I have hereunto set my hand to this my fourth codicil to my last will and testament this 8th day of July, 1953.

MARIA C. JACKSON.

This Is To Certify that on this 8th day of July, 1953, the above-named testatrix, Maria C. Jackson, being then of sound and disposing mind and not acting under any duress or undue influence, made and published the foregoing instrument, consisting of four pages, including this page, bearing her signature, as and for a fourth codicil to her last will and testament, and signed the same in the presence of us and each of us; and at the same time and place, at the request of the said testatrix, and in her presence, and in the presence of each other, we

Exhibit "A"—(Continued)

have signed and attested the same as witnesses thereof.

CHARLES A. HART,  
Residing at Portland, Oregon.

FLETCHER ROCKWOOD,  
Residing at Portland, Oregon.

THOMAS B. STOEL,  
Residing at Portland, Oregon.

EXHIBIT "B"

LAST WILL AND TESTAMENT  
OF  
PHILIP LUDWELL JACKSON

I, Philip Ludwell Jackson, of the County of Multnomah, State of Oregon, do hereby make, publish and declare this my last will and testament, hereby revoking all former wills and codicils made by me.

Article I.

I direct the payment by my executors out of my estate of all of my just debts allowed in the course of administration, the expenses of last illness and funeral, the expenses of administration of my estate and all inheritance, estate and legacy taxes upon property passing under the terms of this will, to the end particularly that the devises and bequests in Articles II, III, IV and V shall be paid, distributed and satisfied without any deduction for

## Exhibit "B"—(Continued)

any of the disbursements under the provisions of this article.

## Article II.

I give and bequeath to my stepdaughter, Nadine Logan Kerr, all articles of furniture and furnishings of my home which were the property of her mother prior to my marriage to her mother.

## Article III.

I give and bequeath to my wife, Esma Peshmalyan Jackson, all household goods, books, apparel, jewelry and all other like contents of my place of abode not bequeathed by Article II hereof, and any automobiles which I may own at the time of my death.

## Article IV.

I give and bequeath to Florence Millsaps, who has been my secretary for many years, the sum of \$5,000.00.

## Article V.

I give, devise and bequeath to William W. Knight, David L. Davies and The United States National Bank of Portland (Oregon) that portion of my estate which shall equal one-half ( $\frac{1}{2}$ ) of the difference between my gross estate and the total of all disbursements except inheritance, estate and legacy taxes made under the provisions of Article I hereof, not for their own use and benefit but in trust for the following uses and purposes:

1. All of the net income therefrom shall be distributed in quarterly or more frequent installments

Exhibit "B"—(Continued)

to my wife, Esma Peshmalyan Jackson, for her lifetime.

2. Upon the death of my wife all of the property then remaining in the trust, including all principal and all accrued, accumulated and undistributed income shall be distributed as my wife shall appoint by her last will and testament, but if my wife shall fail to exercise the power of appointment hereby granted, the remainder of the trust shall at the death of my wife be distributed to the trustees of the trust created by Article VI of this will and shall be administered by the trustees of the trust under Article VI as principal thereof.

Article VI.

All the rest, residue and remainder of my estate of whatever nature and wherever situated I give, devise and bequeath to William W. Knight, David L. Davies and The United States National Bank of Portland (Oregon), not for their own use and benefit but in trust for the following uses and purposes:

1. The net income of the trust shall be distributed as follows:

(a) To my wife, Esma Peshmalyan Jackson, for her lifetime that portion of the income which when added to the income distributable to my wife under the terms of Article V may be necessary to produce a total not exceeding \$6,000.00 per year.

(b) To my stepdaughter, Nadine Logan Kerr, for her lifetime that portion of the income not re-

## Exhibit "B"—(Continued)

quired to satisfy the provisions of subparagraph (a), but not exceeding \$2,400.00 per year.

(c) To my wife for her lifetime that portion of the income not required to satisfy the provisions of subparagraphs (a) and (b) which when added to the income distributable to my wife under the terms of Article V and subparagraph (a) may be necessary to produce a total not exceeding \$15,000.00 per year.

(d) To my said stepdaughter for her lifetime that portion of the income not required to satisfy the provisions of subparagraphs (a), (b) and (c), but not exceeding \$3,600.00 per year.

(e) After the satisfaction of the provisions of subparagraphs (a), (b), (c) and (d), the trustees shall pay out of the income to or for the benefit of each child of Nadine Logan Kerr the sum of \$1,000.00 per year in each year that such child is in regular attendance at a preparatory school situated outside of the metropolitan area of the city of domicile of such child and in each year that such child is in regular attendance as an undergraduate or graduate student at an institution of higher education, wherever situated. No payments shall be made hereunder except as necessary to provide each such child with a total of four years of attendance in a preparatory school and seven years of education in institutions of higher education, including any period of attendance prior to the commencement of such payments. While any child is a minor payments hereunder may be made direct to



Exhibit "B"—(Continued)

the minor or to a parent of the minor for his or her use, or to any school, college or university attended by the minor to defray the expenses of said minor. All children of Nadine Logan Kerr, including any who may be born hereafter either before or after my death, shall be entitled to benefits hereunder.

(f) The remainder of the income not required to satisfy the provisions of the foregoing subparagraphs (a) to (e), inclusive, shall be paid to my wife for her lifetime.

(g) All of the net income from the trust not required for payments to my wife and stepdaughter and the children of my stepdaughter under the terms of subparagraphs (a) to (f) inclusive, shall be distributed by the trustees for use within the State of Oregon for charitable, educational or eleemosynary purposes and for advancement of the public welfare. The trustees shall have absolute discretion in the selection of the particular purposes for which said distribution shall be made and shall select beneficiaries as they shall deem to be most appropriate and best calculated to promote the welfare of the public of the City of Portland or the State of Oregon, or both.

2. Upon the death of my wife the trustees shall distribute from the principal of the trust sums as follows:

(a) To my stepdaughter, Nadine Logan Kerr, if she be living at the time of the death of my wife, the sum of \$5,000.00.

## Exhibit "B"—(Continued)

(b) To Princeton University, an institution of learning located at Princeton, N. J., the sum of \$10,000.00, to be held by it in trust to invest and reinvest such funds in such securities as may by the fiscal authorities of Princeton University be deemed to be in the best interests of the trust, and from the income to establish a scholarship or scholarships to be applied toward the defraying of the expenses of tuition and maintenance while in attendance at Princeton University of such student or students from the State of Oregon as may be selected by Princeton University in accordance with such general principles and under such rules and regulations as may from time to time be fixed and established by Princeton University.

3. If after the death of my wife the trustees deem it appropriate and desirable in the exercise of their sole discretion to terminate the interests of my stepdaughter in this trust and the interests of her children, as provided in subparagraphs (b), (d) and (e) of paragraph 1 prior to the death of my stepdaughter and prior to the time of completion of payment of amounts which would be payable to her children under the terms of subparagraph (e) of paragraph 1, the trustees shall have the power (a) to provide for payments of \$500.00 per month for life to my stepdaughter by the purchase of an annuity contract from a responsible insurance company, and (b) to provide for payments to the then living children of my stepdaughter of annual amounts to which they would otherwise be entitled under the

Exhibit "B"—(Continued)

terms of subparagraph (e) of paragraph 1, by the purchase of appropriate contracts from a responsible insurance company. In purchasing any such contracts the annual payments which shall be provided for any child of my stepdaughter shall be eleven (11) minus the number of years that any such child shall have attended a high school or preparatory school and institution of higher education prior to the date of the purchase of such contracts. The trustees in purchasing any such contract or contracts shall not be required to make any provision for children of my stepdaughter who may be born thereafter. Payments by the trustees for annuities or other contracts under the terms of this paragraph shall be made from the principal of the trust.

4. The trustees may accept contributions to the principal of this trust from any source by gift, devise, legacy or in any other form or by transfer to this trust of assets of any trust created by me by any written agreement executed by me. Property so received by the trustees shall be held and administered as a part of the principal of this trust in the manner hereinbefore set forth in this article.

5. The duration of this trust shall be perpetual, provided, however, that the provisions for my wife and for my stepdaughter and her children contained in this article shall in no event continue for a period longer than the lives of my wife, my stepdaughter and any children of my stepdaughter who are living at the time of my death, and the survivor thereof and 21 years thereafter, at the end of which

## Exhibit "B"—(Continued)

time all provisions of this article for my wife, my stepdaughter and any of her children shall terminate.

6. My mother, Maria C. Jackson, has told me that in a will executed by her she has provided for the establishment of a trust to be known as "The Jackson Foundation" and that the provisions of the trust so provided for, in so far as the beneficiaries of said trust come within the description of the beneficiaries of this trust, other than my wife, my stepdaughter and her children, are the same as the provisions in this article. My trustees shall be authorized, if it may be done conveniently, at any time to consolidate the trust established by this article with such trust established or to be established and to be known as "The Jackson Foundation" under the will of my mother.

## Article VII.

The provisions of this article shall apply to the administration of both of the trusts created by Articles V and VI hereof.

1. If my present home in Riverwood shall become a part of the corpus of either of the trusts created by Articles V and VI hereof, I direct that as soon as it can be done without sacrifice of the value of said property and without undue inconvenience to my wife, the trustees shall sell and dispose of said real property, and in the event of such sale the trustees shall retain the proceeds of said sale as a

Exhibit "B"—(Continued)

part of the principal of the trust, of which said real estate is then a part.

2. The trustees shall invest and reinvest all principal cash in the trust funds in any form of property which the trustees shall deem to be for the best interests of the trusts; and in exercising such powers of investment the trustees shall not be restricted or limited by any statute or law relating to the character of investments which may be made by a fiduciary.

3. The trustees shall hold and manage the property as trust funds with power to sell, exchange, mortgage or otherwise dispose of any of the property as they may deem proper. The trustees shall have the right to exchange any securities in the trusts for any other securities that may be offered in any reorganization, refinancing, merger, consolidation or dissolution or any change of corporate capital structure if in the judgment of the trustees such exchange is advisable. Without in any way limiting the broad powers herein granted to the trustees to sell and dispose of the assets of the trusts, I express the wish, which shall not be construed to be mandatory or binding upon the trustees, that if any stock of Journal Publishing Company, an Oregon corporation, shall be included in the assets of the trusts, the trustees shall in any disposition of such stock endeavor to do so in a manner such as to perpetuate the Oregon Journal, the newspaper published by Journal Publishing Company as a newspaper which conforms generally to



## Exhibit "B"—(Continued)

the standards of that newspaper since the founding thereof by my late father, Charles Samuel Jackson. If it may be done without jeopardy to the standing of said newspaper the trustees shall endeavor to favor and give preference to persons actually in the employ of Journal Publishing Company engaged in the publishing and operation of the newspaper. I appreciate that at this time I cannot adequately define the processes to be adopted by the trustees in carrying out the policies of administration with respect to the stock of the Journal Publishing Company expressed in this paragraph and for that reason I give to the trustees broad powers to be exercised in their discretion in accomplishing the purposes and policies expressed in this article.

4. I have appointed William W. Knight as one of the trustees of the trusts hereby created in anticipation of the fact that he will be at the time of my death an executive in the employ of Journal Publishing Company. If he shall not be employed in that capacity or if during the terms of the trusts he shall cease to be such employee, he shall be disqualified to act as trustee. If he shall be disqualified to act as trustee or shall for any reason cease to be a trustee, his successor as trustee shall be appointed by the other trustees herein named and shall be an individual who is employed as an executive of Journal Publishing Company, and the successor trustee so appointed shall continue to act as trustee as long as he is so employed. The foregoing provisions relating to the terms of William W. Knight and his

Exhibit "B"—(Continued)

successors as trustees are subject to the provision that if while William W. Knight is acting as trustee the trustees dispose of all of the stock held by both trusts of Journal Publishing Company, William W. Knight may continue as trustee even though he ceased to be an employee of Journal Publishing Company, and if neither of the trusts contain any stock of Journal Publishing Company a successor to William W. Knight as trustee need not be an employee of Journal Publishing Company. If David L. Davies shall for any reason fail to qualify or cease to be a trustee, his successor shall be an individual who shall be appointed by the remaining trustees. If for any reason The United States National Bank of Portland (Oregon) shall fail to qualify or cease to be a trustee, its successor shall be appointed by the then remaining trustees, but its successor shall be a national bank or corporation engaged in the City of Portland in business as a fiduciary. If in any circumstances there shall be a vacancy in the office of trustee for which no provision for succession is contained herein, the successor trustee shall be appointed by the remaining trustees, to the end that there shall at all times be two individual trustees and one corporate trustee.

Article VIII.

If it is necessary for my executors to sell or liquidate any of the assets of my estate for the purposes of obtaining money to pay debts, expenses of administration or other charges against my estate, I

## Exhibit "B"—(Continued)

direct that if it is practicable for the executors so to do such sales shall be made and in the order and by classes as follows:

1. My home in Riverwood;
2. All assets other than those described in the following 3, 4, 5 and 6;
3. My stock of Journal Building Company;
4. My common stock of Journal Publishing Company;
5. My preferred stock of Journal Publishing Company;
6. My personal property bequeathed by Articles II and III hereof;

and if it is practicable the property in each class shall be completely liquidated before the sale of any of the property in the next higher numbered class.

## Article IX.

I nominate and appoint David L. Davies and The United States National Bank of Portland (Oregon) as executors of this my last will and testament and I direct that David L. Davies shall be permitted to serve in that capacity without bond or other undertaking. My executors shall have full power to sell, convey, lease, pledge, mortgage or otherwise dispose of any and all real or personal property that I may own at the time of my death or which may be acquired by my estate, and in exercising the powers hereby granted my executors shall not be required to comply in any way with any statute or law relat-

Exhibit "B"—(Continued)

ing to the sale or other disposition of property by the personal representative of an estate, and in particular they shall not be required to obtain from any court any order authorizing or confirming any such sale or other disposition.

In Witness Whereof, I have hereunto set my hand to this my last will and testament this 11th day of June, 1951.

/s/ PHILIP LUDWELL JACKSON.

This instrument, consisting of nine (9) typewritten pages, each bearing the signature of the above named Philip Ludwell Jackson, was by him on the date hereof signed, published and declared to be his last will and testament in our presence, who at his request and in his presence and in the presence of each other, we believing him to be of sound mind and memory, have hereunto subscribed our names as witnesses.

/s/ THOMAS B. STOEL,  
Residing at Portland, Oregon,

/s/ FREDERICK H. TORP,  
Residing at Portland, Oregon.

Affidavit of Service by Mail Attached.

[Endorsed]: Filed January 2, 1958.

[Title of District Court and Cause.]

### MOTION TO DISMISS

The defendants move the court to dismiss this action on the ground that the court lacks jurisdiction over the subject matter because the action is essentially a proceeding to contest a will and therefore one within the exclusive jurisdiction of the state probate courts.

Dated this 7th day of January, 1958.

/s/ ROY F. SHIELDS,

/s/ JAMES G. SMITH,

MAGUIRE, SHIELDS, MORRISON  
& BAILEY,

Attorney for Defendants.

Acknowledgment of Service Attached.

[Endorsed]: Filed January 7, 1958.

---

[Title of District Court and Cause.]

### ORDER ON DEFENDANTS' MOTION TO DISMISS FIRST AMENDED COMPLAINT

This cause having come before the Court for hearing on defendants' motion to dismiss for lack of jurisdiction; and the motion having been argued and submitted for decision; and it appearing to the Court that the first amended complaint presents in substance nothing more than a rearrangement of the claims asserted in the original complaint [cf.



Stark v. Starr, 94 U.S. 477, 485 (1876)], and that the motion to dismiss should be granted upon the grounds and for the reasons stated upon the dismissal of the original complaint [see Jackson v. United States National Bank, Portland, Oregon, 153 F. Supp. 104 (D. Ore. 1957)];

It Is Ordered that defendants' motion to dismiss is hereby granted for want of federal equity jurisdiction over the subject matter; and the attorneys for defendants may lodge with the Clerk within twenty days a judgment of dismissal accordingly, to be settled according to rule.

It Is Further Ordered that the judgment of dismissal shall not operate "as an adjudication upon the merits" [Fed.R.Civ.P. 41(b)], and the judgment to be entered shall so provide.

It Is Further Ordered that the Clerk this day serve copies of this order by United States mail upon the attorneys for the parties appearing in this cause.

June 30, 1958.

/s/ WM. C. MATHES,  
United States District Judge.

[Endorsed]: Filed June 30, 1958.

In The United States District Court,  
District of Oregon

No. 8752

PETER CROCKETT JACKSON, a minor by  
JOHN E. WALKER, his Guardian ad litem,  
Plaintiff,

vs.

THE UNITED STATES NATIONAL BANK,  
PORTLAND, OREGON, a national banking  
association; DAVID LLOYD DAVIES; THE  
UNITED STATES NATIONAL BANK,  
PORTLAND, OREGON, a national banking  
association, and DAVID LLOYD DAVIES, as  
Executors under the purported Will and testa-  
ment of Maria C. Jackson, deceased; THE  
UNITED STATES NATIONAL BANK,  
PORTLAND, OREGON, a national banking  
association, and DAVID LLOYD DAVIES and  
WILLIAM W. KNIGHT, as purported Trus-  
tees appointed by said purported last will and  
testament; and Black White Foundation, a cor-  
poration, Defendants.

### JUDGMENT OF DISMISSAL

The Court having heard and considered defend-  
ants' motion to dismiss this action for lack of  
jurisdiction over the subject matter, and having  
found that such motion should be granted, it is

Ordered and Adjudged that this action is dis-  
missed for lack of jurisdiction over the subject

matter, but without any adjudication upon the merits of any of plaintiff's claims and without costs to or against any of the parties.

Dated this 22nd day of July, 1958.

/s/ WM. C. MATHES,  
District Judge.

[Endorsed]: Filed July 23, 1958.

---

[Title of District Court and Cause.]

### NOTICE OF APPEAL

Notice Is Hereby Given that Peter Crockett Jackson, a minor, plaintiff above named, by John E. Walker, his Guardian ad Litem, hereby appeals to the United States Court of Appeals for the Ninth Circuit from that part of the Order of Dismissal made and entered in this action on June 30, 1958, dismissing said action for want of jurisdiction over the subject matter, and appeals from that part of the Judgment of Dismissal made in said action on July 22nd, 1958, and entered on July 23rd, 1958, dismissing said action for lack of jurisdiction of the subject matter.

Dated: July 24, 1958.

LIVINGSTON & BORREGARD,  
/s/ LAWRENCE LIVINGSTON,  
/s/ RICARDO J. HECHT,  
/s/ JOHN E. WALKER,

JACK, GOODWIN & SANTOS,  
/s/ GLENN R. JACK,  
Attorneys for Plaintiff and  
Appellant.

[Endorsed]: Filed July 24, 1958.

---

[Title of District Court and Cause.]

### COST BOND ON APPEAL

Whereas, Peter Crockett Jackson, a minor, by John E. Walker, his Guardian ad Litem, Plaintiff herein, has prosecuted or is about to prosecute an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from a part of an Order of Dismissal dated and entered June 30, 1958, and a part of a Judgment of Dismissal dated and entered July 23, 1958, by the District Court of the United States for the District of Oregon.

Now, Therefore, in consideration of the premises, the undersigned Fidelity and Deposit Company of Maryland, a corporation duly organized and existing under the laws of the State of Maryland and duly authorized and licensed by the laws of the State of Oregon to do a general surety business in the State of Oregon, does hereby undertake, in a sum not exceeding Two Hundred Fifty Dollars (\$250.00) to which amount said Fidelity and Deposit Company of Maryland acknowledges itself justly bound, to pay the costs of defendants and respond-

ents herein on said appeal if the appeal is dismissed or the judgment affirmed, or such costs as the Appellate Court may award if the judgment is modified.

And further, it is expressly understood and agreed that in case of a breach of any condition of the above obligation, the Court in the above-entitled matter may, upon notice to the Fidelity and Deposit Company of Maryland, of not less than ten (10) days, proceed summarily in the action or suit in which the same was given to ascertain the amount which said surety is bound to pay on account of such breach, and render judgment therefor against it and award execution therefor.

Signed, sealed and dated this 24th day of July, 1958.

[Seal] FIDELITY AND DEPOSIT COM-  
PANY OF MARYLAND,

/s/ By ROBERT B. CUMMING,  
Attorney-in-Fact and Resident  
Agent.

[Endorsed]: Filed July 24, 1958.



[Title of District Court and Cause.]

### DOCKET ENTRIES

1956

Aug. 3—Filed complaint.

Aug. 3—Issued summons—to marshal.

Aug. 3—Filed petition for appointment of guardian ad litem.

Aug. 3—Filed & entered order appointing guardian ad litem.—S.

Aug. 15—Filed summons with marshal's return.

Aug. 16—Filed motion of John Walker for special appearance of Lawrence Livingston.

Aug. 16—Entered order for special appearance for Lawrence Livingston.—McC.

Aug. 22—Filed amendment to complaint.

Aug. 22—Filed praecipe for summons.

Aug. 22—Issued summons on amended complaint—to marshal.

Aug. 23—Filed motion to dismiss.

Aug. 23—Filed summons with marshal's return.

Sept. 4—Entered order postponing hearing on motion to dismiss.—McC.

Sept. 25—Entered order assigning case to Judge William C. Mathes.—McC.

Oct. 22—Entered order setting hearing on defendants' motion to dismiss for Nov. 8, 1956.—McC.

Nov. 7—Filed pltf's points & authorities in opposition to motion to dismiss.—McC.

1956

Nov. 8—Record of hearing on motion of defendants to dismiss—argued & order for simultaneous submission of further briefs within 30 days.—Mathes.

Nov. 8—Filed defts' brief in support of motion to dismiss.

Dec. 4—Copy of transcript forwarded to J. Mathes.

Dec. 10—Filed stipulation re time to file simultaneous briefs.

Dec. 10—Filed & entered order (dated 12/6/56) extending time to file briefs.—Mathes.

Dec. 31—Filed defts' reply brief.

1957

Jan. 2—Filed pls answer to defts opening brief on motion to dismiss.

Jan. 7—Filed ptff's motion to strike portion of oral argument & affidavit.

Jan. 16—Filed defts response to plf's motion to strike portion of oral argument.

Jan. 21—Hearing had & motion to strike taken under advisement. Pltf given 10 days to submit memo in support of his motion.—Mathes.

Jan. 31—Filed memo in support of plaintiff's motion to strike portion of oral argument.

June 28—Filed memorandum of decision.—Mathes.

July 8—Filed pltf's objection to form of Order of Dismissal.

1957

July 8—Filed pltf's motion to file an amended complaint.

July 8—Filed stipulation re time for hearing on objections to form of Order of Dismissal and motion to file amended complaint.

July 22—Filed & entered order approving stipulation.—Mathes.

Sept. 12—Entered order setting for hearing on pending matters on Oct. 22, 1957.—Mathes.

Nov. 19—Entered order setting for hearing on pending matters on Jan. 7, 1958.—Mathes.

1958

Jan. 2—Filed 1st amended complaint.

Jan. 7—Filed motion to file amended complaint.

Jan. 7—Filed affidavit.

Jan. 7—Record of hearing before court on motion to dismiss & motion to file 1st amended complaint.—Mathes.

Jan. 7—Filed & entered order of dismissal dated Dec. 31st, 1957.—Mathes.

Jan. 7—Entered order allowing ptffs to file 1st amend. complaint which has the file mark of Jan. 2, 1958.—Mathes.

Jan. 7—Entered order setting for hearing motion to dismiss 1st amend. complaint on Wed., Jan. 8th at 10:00 a.m.—Mathes.

Jan. 7—Filed defts' motion to dismiss.

1958

- Jan. 8—Record of hearing on motion to dismiss—  
motion to dismiss submitted pending filing  
of briefs 30 days for ptff; 30 days defts.  
to answer; 10 days for reply brief.—  
Mathes.
- Feb. 10—Filed pltfs brief in opposition to motion  
to dismiss 1st amended complaint.
- Mar. 6—Filed stipulation extending time for defts  
to file brief in answer to ptffs brief in  
opposition to motion to dismiss 1st  
Amended Complaint & ptff have to Apr.  
18 to reply.
- Mar. 10—Filed & Entered order extending time  
for defts to file brief to dismiss 1st  
amended complaint to Mar. 28 & ptff time  
to reply extended to April 18.—Mathes.
- Apr. 2—Filed defts ans. to plff brief in opposition  
to motion to dismiss the 1st Amended  
Complaint.
- Apr. 28—Filed reply to defts answer to plfs brief  
in opposition to motion to dismiss the 1st  
Amended comp.
- June 30—Filed & entered order on defts motion to  
dismiss 1st amend. complaint.—Mathes.
- July 22—Entered Judgment of Dismissal.—Mathes.
- July 23—Filed Judgment of Dismissal.
- July 24—Filed notice of appeal by plaintiff.
- July 24—Filed Cost Bond on Appeal.
- Sept. 2—Filed stipulation as to the contents of  
record on appeal.

[Title of District Court and Cause.]

### CERTIFICATE OF CLERK

United States of America,  
District of Oregon—ss.

I, R. DeMott, Clerk of the United States District Court for the District of Oregon, do hereby certify that the foregoing documents consisting of Petition for appointment of Guardian ad Litem; Order appointing Guardian ad Litem; Complaint; Amendment to complaint; Motion to dismiss; Order of dismissal; Memorandum of decision; First amended complaint; Motion to dismiss; Order on defendants' motion to dismiss first amended complaint; Judgment of dismissal; Notice of appeal; Cost bond on appeal; Stipulation as to contents of record on appeal and Transcript of docket entries constitute the record on appeal from a judgment of said court in a cause therein numbered Civil 8752, in which Peter Crockett Jackson, a minor, by John E. Walker, his Guardian ad Litem is the plaintiff and appellant and The United States National Bank, Portland, Oregon, a national banking association, et al, are the defendants and appellees; that the said record has been prepared by me in accordance with the stipulation as to contents of record on appeal filed by the appellant and appellees, and in accordance with the rules of this court.

I further certify that the cost of filing the notice of appeal, \$5.00, has been paid by the appellant.



In Testimony Whereof I have hereunto set my hand and affixed the seal of said court in Portland, in said District, this 2nd day of September, 1958.

[Seal] R. DeMOTT,  
Clerk,

/s/ By THORA LUND,  
Deputy.

---

[Endorsed]: No. 16173. United States Court of Appeals for the Ninth Circuit. Peter Crockett Jackson, a Minor, by John E. Walker, His Guardian ad Litem, Appellant, vs. The United States National Bank, Portland, Oregon, a National Banking Association, et al., Appellees. Transcript of Record. Appeal from the United States District Court for the District of Oregon.

Filed: September 4, 1958.

Docketed: September 8, 1958.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for  
the Ninth Circuit.

In The United States Court of Appeals  
For The Ninth Circuit

No. 16173

PETER CROCKETT JACKSON, a minor by John  
E. Walker, his Guardian ad Litem,  
Appellant,

vs.

THE UNITED STATES NATIONAL BANK,  
PORTLAND, OREGON, a national banking  
association; DAVID LLOYD DAVIES; THE  
UNITED STATES NATIONAL BANK,  
PORTLAND, OREGON, a national banking  
association, and DAVID LLOYD DAVIES, as  
Executors under the purported will and testa-  
ment of Maria C. Jackson, deceased; THE  
UNITED STATES NATIONAL BANK,  
PORTLAND, OREGON, a national banking  
association, and DAVID LLOYD DAVIES  
and WILLIAM W. KNIGHT, as purported  
Trustees appointed by said purported last will  
and testament, and BLACK WHITE FOUN-  
DATION, a corporation, Appellees.

STATEMENT OF POINTS UPON WHICH AP-  
PELLANT RELIES ON APPEAL AND  
DESIGNATION OF RECORD FOR PRINT-  
ING

Points Upon Which Appellant Relies on Appeal.

The District Judge erred in dismissing the com-  
plaint for lack of jurisdiction for the following  
reasons:

1. The amended complaint shows that the appellant is a resident and citizen of the State of California and that all of the appellees are residents and citizens of the State of Oregon.

2. The amended complaint shows that this is an action of a civil nature.

3. The amended complaint shows that the amount in controversy is a sum in excess of \$2,400,000.00.

4. The amended complaint seeks the following relief:

(a) An adjudication that a purported charitable trust created in a will executed with the formalities required by law by a testatrix who was of sound mind is invalid because the discretion accorded to the trustees of the trust is so wide and so indefinite that there is no basis for the supervision of a court of equity over the administration of the trust.

(b) An adjudication that said purported charitable trust is invalid and not a true charitable trust because under the terms thereof the trust property may be used in the untrammelled discretion of the trustees for their own financial profit and gain and provides for other advantages to a limited class of persons.

(c) An adjudication that said trust creates a perpetuity in violation of the laws and public policy of the State of Oregon.

(d) An adjudication that any money and property which may be received by the trustees under the trust provisions of said will resulting in said

fund being impressed with a trust for the benefit of appellant, the sole heir of the testatrix.

(e) An adjudication that the testatrix arranged in proper form prior to her death to the end that appellant would receive out of said estate an amount far in excess of a bequest of \$150,000.00 made to him in said will and that by reason thereof all or part of the residue of said estate is impressed with a trust in favor of appellant.

(f) An adjudication that the trust provisions of said will are invalid because they were the result of fraud practiced on the testatrix.

(g) An adjudication that the trust provisions of said will are invalid because they are the result of undue influence practiced upon the testatrix.

(h) An adjudication that as to any property involved in said trust provisions, the testatrix died intestate and that distribution should be made through the Oregon Probate Court to appellant, the sole heir at law of the testatrix.

Prior to the filing of a responsive pleading in this action and on motion to dismiss for lack of jurisdiction, the District Judge dismissed this action upon said ground. Said order was erroneous in that it failed correctly to construe and to administer the applicable laws of the United States and of the State of Oregon.

#### Designation of Record for Printing.

Appellant hereby designates for printing the entire certified transcript of record.

Following this page is an affidavit of mailing of a copy of the within and foregoing Statement of Points Upon Which Appellant Relies on Appeal and Designation of Record for Printing to the attorneys for appellees.

Dated September 24, 1958.

/s/ GLENN R. JACK,

/s/ JOHN E. WALKER,

LIVINGSTON & BORREGARD,

/s/ By LAWRENCE LIVINGSTON,

/s/ LAWRENCE LIVINGSTON,

/s/ RICARDO J. HECHT,

Attorneys for Appellant.

Certificate of Service by Mail Attached.

[Endorsed]: Filed September 24, 1958. Paul P. O'Brien, Clerk.